United States Court of Appeals
for the Second Circuit

APPENDIX

77-2035
77-2135

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United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 77-2035
77-2135

UNITED STATES *ex rel.* LOUIS WOLFISH, *et al.*,
Petitioners-Appellees,

—v.—

HONORABLE EDWARD LEVI, *et al.*,
Respondents-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES COURT OF APPEALS
FILED
DEC 9 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

JOINT APPENDIX

Volume II (Pages A-401 to A-800)

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Telephone Company does not.

MR. SCHAFFER: Let me explain a little further about the problem of the risers.

In anticipation of some changeover which would require greater riser capability, the institution has already drilled holes in the floor and sent up a temporary riser with the capability of 25 cable pairs which could accommodate either 11 additional pay phones because the pay phones require a double pair going up and down, or the 22 extensions under the commissary system. This is a temporary capability. You can see the holes in the floors and you can see these things going up in copper tubing. For the time being that's the extent of the temporary expansion possible.

The institution would then do, if further riser capability was necessary, the engineering and procurement for a more permanent riser capability. Mr. Young's faith in the ability of GSA to accomplish almost anything is --

B5 THE COURT: Probably, based on a total absence of experience in dealing with the GSA.

MR. SCHAFFER: Perhaps.

Your Honor, there are also engineering difficulties so that I just wanted to make it clear that the 3 to 6-month time to further increase the riser capacity ability is by no means fictitious or a gross exaggeration. We have made the efforts already to increase temporarily the riser capability and there are engineering and procurement limits as to how fast this can be done.

MR. YOUNG: May I ask the Telephone Company one question: In your experience, if this were a business building, or whatever, and you had an emergency to put in the number of phones we are talking about, would you be able to do it?

MR. KATKIN: It would depend upon the circumstances and the nature of the emergency. I can say there have been many situations, for example, in some of the major buildings in downtown Manhattan which are highly congested brokerage houses where we have been required to keep customers wanting additional telephones waiting for literally months until additional cable facilities could be put in. Certainly I would imagine if it was the case of a hospital or Fire Department, or something else, there are obviously all kinds of emergency measures that can be taken, and so forth; but in the ordinary course of things these things do lap and there are engineering delays.

THE COURT: Let me ask you this, Mr. Schaffer: I am not sure I understand this fully, but is there a present intention to go to work on this increased capability, or is that something that would begin in case it turned out to be necessary?

MR. SCHAFFER: That, of course, would depend at least in part on your Honor's order. If we were going on a pay phone system in which we would be limited to 11 pay phone extensions operating on 11 trunk lines, since the delay in putting through calls would probably be less than on a commissary system, since the operator would not have to be involved in checking through papers to see that a proper authorization form had been signed and it had been checked, and there was money in the account of that inmate, since the system would probably work somewhat more rapidly it might be that the problem to which Mr. Young previously alluded as the reason for needing further extensions on the commissary system might not be present on a prepaid system.

We would request the Court an opportunity to do a traffic study if we were to use a prepaid system in order to determine whether additional extensions were necessary and, therefore, we would request that we not be obligated to begin the engineering work for the installation of those additional risers until such a study had been done.

I should point out that these traffic studies are done under the system that we are proposing as a matter of course, and we would know at the end of the first month whether or not additional extensions are needed on the basis of traffic studies. Therefore, what I am basically saying is that we would like a month experimentation before -- if we can use a prepaid system -- before we were obligated to begin engineering procurement for additional riser capability.

THE COURT: Everything you say perhaps because of the way you say it sounds reasonable, and I tend to think it is manageable. That is to say, if you choose this thing that you call prepaid, if it doesn't work, if it is causing unrest, difficulty, and legitimate grievances among the prisoners, then I think you should be allowed to go to work at that point to create the additional facilities, but on the understanding -- and I want to place this on the record -- that in the interim you would have to take measures to cope with the short call. You might have to increase the 8 hours to 16. You might have to increase the operators or do whatever things that prove necessary to see to it that the thing worked tolerably until you got these extra holes drilled and the extra risers put in.

I don't think it would be fair or reasonable from what is known to me now to direct a preliminary injunction while the prison authorities begin work now and are fixing up those additional facilities. I would tend to go along with you if you choose the prepaid alternate with the understanding that you have just expressed.

Is that clear to you?

MR. SCHAFFER: Yes, it is.

THE COURT: Mr. Young?

MR. YOUNG: I have nothing else to say, your Honor.

THE COURT: Let's be clear with each other.

I think in fairness -- and that is the reason I suggested you go back and see your clients, Mr. Corsi and Mr. Schaffer -- the government ought to have a choice between the options that Mr. Young's papers give, and I think you ought to confer as to which of those you wish to select.

MR. SCHAFFER: We appreciate that opportunity and we will confer with our clients on that.

I would like to make clear, for the record, that in our choice of which of these two options would be more feasible or preferable to the institution, in doing that we do not wish in any way necessarily to consent to the overall preliminary injunction, and we wish to reserve our rights in that regard.

THE COURT: That's certainly fair. You do.

To make it clear, the work we have done together up to now has let to agreement on all portions of the proposed preliminary injunction except the matters we have been debating this morning.

Is that an accurate statement, Mr. Corsi?

MR. ÇORSI: Yes, your Honor.

THE COURT: Surely you reserve your right.

Let's make a schedule. What I would like you to do, in order to put as much work as possible on counsel and as little as possible on the Court is this: I would like to let government counsel have an opportunity to speak with the warden and his colleagues. I would like the results of that to be discussed briefly and cooperatively with counsel for the relators, and I would like those conversations to produce an order for my signature that conforms to the determinations I have made in this discussion.

I am holding that that must be done this afternoon, and I will give you whatever time it takes to come back so that we can complete the paperwork.

Can it all be done by 4:00 o'clock, do you think?

MR. CORSI: I think so, your Honor.

MR. YOUNG: Hopefully, your Honor.

THE COURT: Come back at 4:00 o'clock with a retyped order for my signature, and then you can recite it on the record how that order resolves the several issues we have discussed.

I will see you at 4:00 o'clock.

(Time noted: 11:40 a.m.)

4:30 p.m.

MR. CORSI: Your Honor, literally at 4:00 o'clock this (indicating) came out of the typewriter, so Mr. Young has only had a very few minutes to take a look at it.

THE COURT: Have you been through this, Mr. Young?

MR. YOUNG: Just the last few moments. I do have several objections to it, your Honor.

THE COURT: Let me find out what we have to get done this afternoon.

Is this the only open question we have left from this morning, the arrangements?

MR. CORSI: I think there is some question as to the number of extensions. I am informed that assuming this is a proposal which is acceptable to the Court, the Telephone Company has delivered cable and it is in for the risers, which would permit 25 pairs, which would, and could, accommodate the 22 extensions. At the present time, however, the wiring literally on to the floors is only for 11 extensions It is going to take some time.

We would request approximately 30 days to wire in an additional extension on each floor which would give two per unit.

THE COURT: We have the telephone experts here and I don't know positive from negative. Let me ask Mr. Katkin, as far as the technology is concerned, is it a reasonable period? It does not seem to me to be so. Is that something you are involved in?

MR. KATKIN: There is little I can tell you, your Honor. I don't know the interior arrangements or the layout of the facility.

THE COURT: If we wanted to put two more extensions on this floor, or in my house -- which has happened from time to time -- or in anybody's poolhall, does it really need 30 days to get that done?

B6 Mr. Scannell, do you know any reason in the world why it should take 30 days to do that kind of thing?

MR. SCANNELL: Like Mr. Katkin, I am an attorney. My technical knowledge also is limited.

MR. CORSI: I may obviate much of this, your Honor.

The problem is that the technician who is a MCC employee, who would be running the lines literally from the risers, is, I believe, tomorrow, starting a technical course which is going to run for approximately five weeks. They are going to have to bring in some outside person, still

Bureau of Prison personnel, but from another institution, to do the wiring. That's what is causing the delay.

We would request 30 days. We are hoping it can be done in a much shorter period of time.

THE COURT: I will hear Mr. Young on that.

MR. YOUNG: Your Honor, what the government is proposing is that the long distance phone arrangements would be half of what this Court this morning indicated was desirable for 30 days because an employee of the MCC is taking a course. I don't think that's a justifiable excuse for that long a delay in reducing the long distance services over what they have been.

THE COURT: I will give you 7 days to do that, which seems to me to be about 5-1/2 days more than you need.

Really, Mr. Corsi, I know you have a job to do, and we all have to contend with clients, but tell your clients they ought to treat you better than that, to make a government lawyer come to court with a story like that, that the government of the United States of America, having a technician about to take a course that takes 5 weeks, means that there is no one else in the world and you have to have 30 days.

My condolences to you for having to present that kind of story.

My ruling is that it is unacceptable. You have 7 days to accomplish that.

As I say, I hope you get it done sooner.

I am making the order on this record now. You may not have it typed up tonight. The order is effective when this Court rises this evening, which is September 30th, and it will be dated when I sign it tomorrow, nunc pro tunc, September 30th; so you don't have to break your fingers on a typewriter. Let's understand that any time dates from this afternoon, and the seven days end on October 7, as I calculate it, dating it from this evening.

Mr. Corsi, I asked Mr. Young to speak, but then you got involved in that time problem.

Are there any other problems you wanted to state at this point?

MR.CORSI: I think that covers it, your Honor.

THE COURT: Mr. Young, this proposed paragraph 2 has been placed before you for any discussion that you want to have about it.

MR.YOUNG: Going down the paragraph, in the first paragraph I am deeply concerned about the statement "and must be approved." Without qualification that implies that the officials at the MCC would have the ability to refuse a long distance call if they did not deem the person being called appropriate, or for any reason. That raises --

MR. CORSI: I may be able to clarify that. "It must be approved," relates directly to the commissary.

THE COURT: You have got that in sub-paragraph E, and I don't see why you need it here.

MR. CORSI: That was a drafting problem.

THE COURT: We are solving that problem. Let's strike out the comma and "must be approved."

MR. YOUNG: Moving on to sub-paragraph A, I would refer your Honor to the proposed order that we submitted and the arrangements that were made on page 3 for authorization for long distance calls. What we sought to do, we provided a way by which an inmate could give a blanket authorization if he intended to call his family on a repeated basis, say, once a week. He knows he is going to be making that call repeatedly. He could sign one document once authorizaing that any call that he makes to that number be charged to his account.

In 2, other long distance calls, we provided for a procedure by which an inmate could authorize an individual long distance call by notifying the appropriate offical 24 hours in advance or providing he needed authorization.

We also made provision for an inmate who realizes on a particular date he needs to make a long distance call. An example of this would be if he made a local call and was advised that his attorney needed to talk to him in New Jersey, or that his family needed to talk to him in Connecticut; he would have a system by which he could provide an authorization for that phone call on one hour's notice.

We urge that that type of authorization is more satisfactory than the one provided by the government which requires that written authorization for all calls be provided 24 hours in advance and that a separate authorization must be submitted for each call.

THE COURT: Let me ask you, Mr. Young, based on your study as to how the MCC works whether it would not be workable to have something like a four-hour advance notification to each? It's not that big a place. I don't see why the bookkeeping in the commissary is such that four hours shouldn't be enough to find out if there is enough money in the bank to make the phone call.

Would that be acceptable?

MR. YOUNG: Four hours, yes.

Our main concern was that it be placed in the same day and that would provide for that.

THE COURT: What is this day's notice?

MR. CORSI: The way the commissary system presently operates, the commissary officers use the hours from 8:00 in the morning to noon to do bookkeeping work relating to the commissary. The rest of the time during the day they actually are filling out commissary orders; that is, looking at a particular authorization that an inmate has sent down, getting together the items that the inmate requested to purchase, packaging it and getting it ready to have it sent upstairs. That's part of the day, the largest part of the day for the officers.

In discussing the proposal with the warden, by doing it this way, the authorization will be sent down sometime the night before. It would be sent down and put in the commissary office. Then at 8:00 o'clock that morning of the day that the individual wanted to make the call the commissary personnel could look at the authorization and go to the individual's commissary account and make sure that the individual had money for the call; then the authorization would be sent up to the long distance operator and she would know that there were funds as of, say, 8:00 o'clock that morning, for the call. But we just want it so it is there in the morning when he is doing the accounting-type work. That was the reason for that proposal.

THE COURT: I can understand the reason, but I am not going to countenance it. People have to be able to show a certain measure of flexibility, and I am going to require that.

Change paragraph A to say at least four hours instead of the day before.

Any inmate, I suppose, would be advised to do it sooner if he or she can.

Then, towards the bottom, "outside the continental United States you need at least 36 hours' notice." Explain to me how you worked out that requirement.

MR. CORSI: Yes, your Honor.

Because, your Honor, the institution will have to get in touch with a long distance operator for the Phone Company and ascertain how much the charges would be for a call to wherever this place is; then, once that charge is ascertained, we would have to go back through the accounting records of the commissary to make sure that the individual has the funds sufficient to cover that call.

MR.YOUNG: In our order we had recognized the problem Mr. Corsi just described and provided for 24 hours' advance notice in those instances in which somebody wished to call outside the continental United States, or an inmate had less than $10 in his account.

B7 THE COURT: Why don't we compromise and and go back to the 24 hours? That seems to me to be enough.

pgds

Make the 36 into 24.

Now, I interrupted you. I wanted to get those notice times down, Mr. Young.

Do you have any other problems about this?

MR. YOUNG: I think that covers everything I had a problem with.

(Pause)

I think those are all the objections we had. The system that the government has proposed is satisfactory.

THE COURT: For my guidance, if we ever have to talk about this, without my doing what you will be doing overnight, that is, slicing together these provisions, is it now left possible for an inmate, who wishes to do so, to make a collect call? Is that going to be covered in the order?

MR.CORSI: Yes. The first sentence says that inmates will be permitted to make collect calls and calls charged to their commissary.

THE COURT: Is it clear that the collect call doesn't need any advance notice? It seems to me it should not. There is no reason for it.

MR. CORSI: That's correct. Yes, sir.

THE COURT: Let me sugest this: You say inmates will be permitted to make collect calls without following the procedures hereinafter outlined, and calls subject to those procedures charge to their commissary accounts, or something like that. I say that just so there is a record of what I gather you really intend.

I assume that we are all set and you don't need any more audience with Mr. Golden or anybody.

MR. CORSI: There is one last point, your Honor. I would like to reiterate this: The submission of this proposal by the government is without prejudice to its rights to appeal it if that is the course it chooses to take.

THE COURT: Sure. I understand.

What I would like you to do is get up the form of order now and bring it to me and date it today showing that you both agree to it as the form, and I will sign it.

Now is as good a time as any other time, since Mr. Katkin has been subject to such emotional strain, I ought to sign his proposed order vacating the restraint against the Phone Company.

Mr. Katkin, maybe my credit is good. I don't see it here.

MR. KATKIN: I have another copy.

THE COURT: I will sign that.

It does not show, but we all know that it is being signed on consent orally, and I think that covers you, pgds

Mr. Young.

MR. YOUNG: At this time we withdraw the application we made to have the Telephone Company named as a party to this action, and we will also withdraw our action for an order to show cause and a preliminary injunction against the Telephone Company on the understanding that they have agreed not to remove their existing services until the new services a[illegible]perational.

[illegible]. KATKIN: Our agreement remains in effect, your Honor, and we will comply with it.

THE COURT: I do not think I have to sign any more papers. You have a sufficient record of that in this talk on this transcript.

MR. KATKIN: I am assuming my presence will not be necessary in the morning for formal signing of this document?

THE COURT: You are welcome to come. I don't give out pens.

You are not needed.

Gentlemen, let me say one other thing: Unless Mr. Young says something astonishing right now, I am going to grant the adjournment the government requests on the motion to quash on summary judgment.

I would have thought you would be giving notice of a trial at this point.

MR. YOUNG: It was our feeling that certain of the issues were so clear there was no need for that. Having eliminated the issues, we have eliminated the witnesses we would have needed to call at a hearing.

I have suggested settlement on these issues and the government has declined to settle on that, so, apparently, they feel the issues are not right for summary judgment.

THE COURT: Let's have an understanding right now.

Have you said when you are going to respond, Mr. Corsi? You want one more adjournment?

MR. CORSI: I believe it says in the letter October 27th, the first paragraph --

THE COURT: That's not the adjournment of the time for you to answer.

MR. CORSI: May we have that date to respond?

THE COURT: I don't see why. You have had a lot of time to work on this case. I took you at your word and I thought I would grant what you asked for, a month's adjournment return date, and now I think you better wheel back in light of what you asked for and what is being granted and follow the Court's rules accordingly in getting in your papers. Let's be specific about that. I think your papers in opposition should be filed by October 18, served and filed, and any reply papers will be served and filed by October 26, so that the motion or motions will be ready on the 27th, and we will get to them as promptly that day as we can.

Is there anything else for me to do now?

MR. YOUNG: No, your Honor.

THE COURT: Thank you all.

(Time noted: 5:00 o'clock p.m.)

* * * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-------------------------------------x

UNITED STATES OF AMERICA ex rel
LOUIS WOLFISH,

Relators,

-against-

UNITED STATES OF AMERICA, et al.,

Respondents.

-------------------------------------x

75 Civ. 6000

September 29, 1976
4:15 p.m.

BEFORE:

HON. MARVIN E. FRANKEL,

District Judge

APPEARANCES:

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Legal Aid Society
Attorneys for Relators

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United States Attorney for the
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BY: LOUIS CORSI, ESQ.
FREDERICK P. SCHAFFER, ESQ.
Assistant United States Attorneys

PRESENT:

BURTON K. KATKIN, ESQ.
ROBERT SCANNELL, ESQ.
Attorneys for New York Telephone Company

THE COURT: I can't keep up with the papers in this, gentlemen, and I have not kept up. I think the first order of business maybe is the last piece of paper -- maybe not the last, because it is hard to know what is the last in this case, but I think we better deal with Mr. Young's order to show cause and motion to add the New York Telephone Company to this case. Let's do it in the opposite order.

Why shouldn't the phone company be added?

Mr. Katkin, are you going to speak to that?

MR. KATKIN: Yes, your Honor, I will.

THE COURT: I don't know that you actually strict standing until you are added, but since there is an order to show cause against you I guess we can skip some of the steps and hear you now.

MR. KATKIN: Thank you, your Honor.

Your Honor, as was pointed out the last time we appeared before you, a week and a day ago, there is no need to add the telephone company as a party to this proceeding. The telephone company stands and has stood ready to provide telephone service in such quantity as either the parties or the Court deem to be appropriate at the correctional facilities. We would be delighted to do so. We are in the business of providing telephone service. That is the way we make our living.

On the other hand, Mr. Young has not cited any authority, nor do I believe there is any authority extant for the proposition that the telephone company, or indeed any utility, can be required to continue to provide its services without payment, and that is the issue here.

THE COURT: Well, he cited and I have not studied this, some alleged authority, 47 United States Code, Section 214.

MR. KATKIN: That citation is in apposite in this situation, your Honor. What the telephone company is proposing to do is to in no way withdraw a service offering. We stand ready to supply the service to this facility pursuant to our tariffs which also require payment for the service. The tariff provision, which by the way is a tariff on file with the New York Public Service Commission, not the Federal Communications, the provision of telephone industries is not a service regulated by the Federal Communications Commission.

In any event, even if it were, this is not a situation such as in the ITT case, which Mr. Young cites in his papers, where the company is proposing to withdraw a tariff offering which is in existence. We have no intention of doing such. Our tariff offering says we will provide in appropriate locations where our revenues can be protected, where the facilities can be protected, where the customers can be protected -- we will provide service to the extent we receive payment. This is termination of a service for a non-payment condition pursuant to the tariffs. We are not seeking to alter, modify or withdraw any service offering whatsoever. Indeed, were we to continue to provide service in this location without receiving payment for our service, we might well be guilty of an unlawful discrimination as against other subscribers to telephone service from whom we do insist on payment.

THE COURT: I think there is weight in everything you say. When you were all last here, which must have been give or take a few days, a week or so ago, you on behalf of your client were good enough to agree to hold the situation unchanged because I understood that the Government and the petitioners were within inches of disposing of this problem by agreement.

MR. KATKIN: Your Honor, if I may, you will recall after some lengthy discussion as to the extent of the appropriate service to be provided, your Honor put on the record what you believed would be the appropriate service to be provided and instructed the parties to either come back to you with a stipulation embodying that agreement or an indication that they could not agree, in which case you would enter an appropriate order. You gave the parties 22 hours to do that. We certainly agreed and we have abided up to this point, now over a week and a day, by my statement that we would take any action whatsoever, nor have we threatened any action since that time, but your Honor should also realize we are now the middleman in a dispute between these two parties, both of whom or obviously content to let the situation ride where we are now out an additional several thousand dollars in the week that has passed.

THE COURT: I understand that. I didn't mean for you to respond to my last comment because that was sort of an invitation to Mr. Corsi and Mr. Young, in that order, to tell me why the agreement that was so imminent and for which they rushed in for an extension of time to dot the last I has not eventuated and what they think I ought to do in light of this new situation.

Mr. Corsi?

MR. CORSI: Your Honor, first, with respect to the appearance we made before your Honor after that initial proceeding, we had been advised -- conversations were going on constantly after the appearance on last Tuesday with the telephone company and technical people from the Bureau of Prisons trying to come up with a system that would satisfy the needs both of the inmates in the institution and the institutional needs. At literally the 23rd hour, a proposal came up and we had not had a chance to think it through -- when I say a proposal came up, in the discussions between the telephone company and the technical people for the Bureau of Prisons, and at that point we discussed it with counsel for the telephone company and they were willing to give us a few more days to discuss and make sure it was technically feasible. At that point I came to the court and I requested that with the consent of the telephone company we be given a few more days.

As I indicated to the Court at that time, it had come up at such a late point that I had not even had an opportunity to ask Mr. Young if he would agree to such an extension, and the Court directed me then to contact Mr. Young and discuss it with him.

At that time I told Mr. Young precisely what I told the Court, something has come up, we are not sure whether it is technically feasible, we can't promise results, but to give us an opportunity to think it through.

Then we met in chambers and that agreement was solidified, not in writing, but orally among the parties.

Upon further investigation, your Honor, it appears that the precise alternative that was being bandied about would not make it technical. We continued to talk about other proposals through some further engineering, it appears that a better proposal than the one that we had originally proposed would be feasible, and that is what we have put in the memo of law, a description of it, and we have served, through a letter to Mr. Young, that proposal. That would call for the 23 restricted pay phones, a 11-trunk line system rather than the five trunk line system proposed, an expansion of the calls from a five-minute limit to a ten-minute limit --

THE COURT: I don't want to go into all those details because my head is filled with kinds of telephone connections from the last time and I have more of those than I need. I guess the main thing I want to know is if Mr. Young has had time to look it over and can you agree on that?

MR. YOUNG: The Government's latest proposal?

THE COURT: Yes.

MR. YOUNG: For the reasons stated in our supplementary memorandum, we cannot. Precisely, last Tuesday your Honor ordered certain things to be included in the order that was to be settled between the parties. One of the principal factors that your Honor ordered was that the inmates be provided with some system whereby they could pay for their own long-distance calls. We naturally assumed when

Mr. Corsi called us before your Honor on Wednesday that any proposal that they were considering or that they would offer in the future would include a provision to that effect.

Mr. Corsi refused to describe the details of the new proposal that they were bandying about, as he says, and we waited patiently until this last Monday, when we were advised by the U. S. Attorney's office that they would not comply with that aspect of your Honor's order but rather would seek to reargue the validity of that --

THE COURT: Let's go in shorthand a little. I know that's hard for us lawyers, but I just want to know the points of disagreement.

One, prisoners paying for their own calls?

MR. YOUNG: That and the length of time the long distance system would be in operation. At the present time they have 16 hours of long distance calling services per day. The warden proposes to cut that more than in half, to eight hours per day and we suggested --

THE COURT: I know shorthand goes awfully hard for us, especially me. Length of time per day, what else?

MR. YOUNG: Those are the only two issues.

THE COURT: Do you agree with that, Mr. Corsi?

MR. CORSI: I think those are the two main issues.

There may be minor ones, but those are the two.

THE COURT: Here is what I want you to do.

I want you to get up a form of preliminary injunction, including all the matters that through our conversation on the prior occasion and what you tell me now have been agreed upon, and leave two aparagraphs -- leave enough room for me to add two paragraphs, and do that by, say, 10:30 tomorrow morning and come back and at 10:30 tomorrow morning I will add the two paragraphs, if you cannot overnight, and I direct you to try, agree on those two open questions. I do direct you to -- by the way, is that prior transcript available?

MR. YOUNG: I asked the Court Reporter for it. It is being written up.

THE COURT: You both remember what we talked about?

MR. YOUNG: Yes.

THE COURT: I urge you to try to agree on those two open questions, but if you cannot, I am going to order, one way or the other, three resolutions, after hearing you again briefly, Mr. Corsi, and anything you want me to reconsider.

When I last saw you, Mr. Katkin, it was my understanding that though it wouldn't enjoy the situation, the telephone company would contrive to live with it for the time necessary to do the physical changes.

MR. KATKIN: Absolutely, your Honor. There is no change in that commitment. Our only concern is that a resolution be reached.

THE COURT: If a resolution is reached tomorrow morning, are you willing to extend that period of restraint, self-restraint?

MR. KATKIN: Without question, your Honor.

THE COURT: If that's done, Mr. Young, although your papers are very interesting, do you need another party in the case?

MR. YOUNG: Could I reserve on that until tomorrow morning?

THE COURT: Yes.

MR. YOUNG: We have come up with some things we might privide more relief the Government is willing to provide for us, which could only be provided by the telephone company --

THE COURT: Let me tell you, if that is your problem, I may suggest you have to bring another lawsuit, because just adding a party into this business, which involves everything from double celling, to diets, and so on, just because you think you can extract something from the phone company is not an appealing arrangement, as far as I am concerned. I will give you overnight to think about it and I suppose I have to ask you to rejoin us tomorrow, Mr. Katkin, and defend your company's interest. If you make the 10:30 I may not be absolutely finished with something that's here at 10:30, but can I request that you accommodate us to that extent, or would you rather come at 11?

Come at 10:30 and I will try to get to you then.

MR. CORSI: Just one last thing, your Honor.

We have served this affidavit which explains some of the technical problems that we faced.

THE COURT: Mr. Corsi, I have not really gone through all your papers. Between now and tomorrow morning on the two open issues should I read the affidavits you have submitted?

MR. CORSI: Yes, your Honor, I think it would be very helpful. Thank you, your Honor.

(Adjourned.)

* * * * * * * * *

U.S. DISTRICT COURT
FILED
APR 6 1977
S.D. OF N.Y.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA ex rel. :
LOUIS R. WOLFISH, et al., :

Relators, :

-against- :

UNITED STATES OF AMERICA, :
et al., :

Respondents. :

- - - - - - - - - - - - - - - - - - -x

75 Civ. 6000

MEMORANDUM

FRANKEL, D.J.

Attached is a copy of a letter received today from Mr. Michael S. Gardner, a member of the plaintiff class. Despite Mr. Gardner's active participation in the case, the court is unwilling and unable to act on such individual requests except as they are made in the normal course by able counsel for the plaintiff class.

A copy of this memorandum is being sent to Mr. Gardner for his information.

Dated, New York, New York

April 6, 1977

Marvin E. Frankel
U.S.D.J.

MICROFILM
APR 6 1977

Michael S. Gardner
150 Park Row
New York, New York 10007

March 31, 1977

Honorable Marvin E. Frankel
United States District Judge
Southern District of New York
United States Courthouse
40 Foley Square
New York, New York 10007

Dear Judge Frankel,

I deeply appreciate your granting me permission to be in Court during the presentation of the respondents' case in the "Wolfish" action. I am but one of many who worked hard and long and cares ever so deeply about the outcome of this action.

The "Class" is indeed fortunate that the Court, in its wisdom, chose to appoint Mr. Young and Mr. Meshlin as our counsel. One would have had to look far and wide to find more conscientious, hard-working, or caring attorneys.

Federal prisoners around the country are but one gruop who anxiously awaits your decision, a decision which the prison community is well aware will be crucial in shaping things to come in the dismal world of prisons.

I write to point to the only two negative things I can think of relative to this entire proceeding, and even they are really outside the scope of the proceeding.

1) The modular concept makes communication between units nearly impossible. Word of what the current status of this action is, what the Court's decisions actually have been, ect. is not properly dissemanated. What has happened could easily be likened to the old game of whispering a story to one who will continue to pass it down a line. At the end of the line, the strory is never recognizable. I have been here as long as any inmate and have a torough knowledge of what has happened to date, and ask if the Court could order that I be allowed to share this knowledge with the other members of the "Class". A "Welcome Wagon" concept was started at the M.C.C., but fizzled out. Could this not be rekindled and include the dissemanation of information relative to this action?

2) Next we come to the protective order. Needless to say, self-interest makes me most unhappy that Your Honor in his wisdom has apparently chosen not to rule on this issue.

When Mr. Hemlock testified, Your Honor made abundantly clear that he would tolerate no harrassment or unkind words directed to Mr. Hemlock as a result of his testimony in this case. While I do sympathize with Mr. Hemlock's position and agree with Your Honor's admonitions, I would point out that a review of who the inmate witnesses present were would indicate that the warning was addressed to the wrong audience and hardly necessary.

What I hope will be abundantly clear upon reflection is that Your Honor's warning at that time was also not properly directed. A Court as enlightened as yours must be well aware of the fact that prison authorities, accustomed as they are to totally unchallenged, total authoritative control over their inmates, would indeed be prone to retaliate against prisoners who would "rock the boat". Clearly, Mr. Hemlock acted out of self-interest, just as clearly, inmate witnesses for the petitioners acted out of a completely different motivation.

Relative to my designation, certain factors stand clear;

A) I was designated to Allenwood. This admittedly came to Rakoff's attention as a result of a visit he received from Messers Corsi and Shaffer relative to gaining information to use in discrediting my testimony. If not for that visit, I would still be designated to Allenwood.

B) Rakoff's affidavit differs significantly from that of Mr. Carlson. Rakoff saying the decision to redesignate was generated by Mr. Carlson, after the U.S. Attorney's Office requested information. Mr. Carlson saying that the reasons for the redesignation emminated with the U.S. Attorney's Office.

C) Mr. Rakoff became emotionally involved in my persecution and consistantly lies to the Courts, and anyone else who will listen about me. I would be only too happy to brief this and give Your Honor substantial evidence of this most serious allegation. The relevance being that Mr. Abromowitz and Mr. Carlson may vey well have acted in good faith, based upon Mr. Rakoff's false statements.

D) My being sent to Danbury is vindictive. It is contrary to Judge Pierce's recommendation. Mr. Rakoff is aware of what the other parties apparently, including Mr. Carlson, are not; and that is, that my life would be in danger at Danbury.

March 31, 1977 page three

E) I am qualified for Allenwood and was being sent there after a careful review of my central file.

F) Contrary to Mr. Shaffer's statement that I am trying to use this law suit to change my designation; if not for this law suit, I would now be in Allenwood, not Danbury. The facts are clear relevant to that.

G) I currently have a Rule 35 motion pending before Judge Pierce in which I raised this issue. I have also prepared and intend to file in the next couple of days a Writ of Habeas Corpus, challenging my designation. I am hopeful that this matter will be favorably resolved and would ask that Your Honor adjourn my current writ until this matter has been finally adjudicated. I promise to pursue this entire area with vigor and have it resolved as soon as possible.

I, again, wish to thank the Court for the kind way it chose to allow us to be present during portions of these proceedings, and for the fair way we have been treated and considered as a class.

Respectfully,

Michael S. Gardner

SMG/sbg

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U. S. DISTRICT COURT
FILED
APR 21 1977
S. D. OF N. Y.

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UNITED STATES OF AMERICA ex rel. :
LOUIS R. WOLFISH, et al., :

Relators, :

-against- :

UNITED STATES OF AMERICA, :
et al., :

Respondents. :

- - - - - - - - - - - - - - - - - - x

75 Civ. 6000

MEMORANDUM
TO
COUNSEL

MICROFILM
APR 21 1977

FRANKEL, D.J.

The court continues to receive correspondence from inmates about issues pending for decision. It has become an unacceptable burden to write memoranda on all of these communications. From today forward, they will be kept in a special file in these chambers, available for inspection by counsel from time to time. Counsel for petitioners should report this arrangement to their clients and also report that individual responses will no longer be possible.

It is so ordered.

Dated, New York, New York
April 21, 1977

Marvin E. Frankel
U.S.D.J.

Q Yes. And going back from that point in time.

A For the last couple of years I was self-employed as a financial consultant. Prior to that I was in the brokerage business for six or seven years. Prior to that I was in the United States Navy. Prior to that I was a student.

Q Would you give us a brief description of the charges that have been brought against you and those that resulted in conviction?

A They fall into two caregories. Fraud, mail fraud involving securities transactions, and interstate transportation of stolen securities.

Q Basically, when was the first time you were indicted?

A 1973.

Q What was the charge at that time?

A It was a stock manipulation case in which I was convicted of the conspiracy case in a jury trial before Judge Bauman at that time.

Q What was your sentence?

A A year and a day.

Q And --

A And it was on that sentence I was originally case. The fact that conditions may vary in certain respects do not in our view constitute any kind of constitutional deprivation and that such testimony is therefore irrelevant.

MR. YOUNG: The simple fact is that although the Metropolitan Correctional Center here in New York has been designated as a short-term facility, poeple in fact stay there for prolonged periods of time. Mr. Tardner will be one example of that. Mr. Victory will be another.

THE COURT: I understand that, but I don't think the conditions in some other prison set a constitutional floor. I have been to several prisons which I think are substantially above the constitutional minimum in noticeable respects. So I don't think it is going tc help me to make these comparisons and I am going rule in that fasion to this extent.

If you anticipate that any kinds of conditions that you claim ought to exist have been or will be characterized as impossible of attainment by respondents, and you want to meet that suggestion by showing they do that in San Diego or Danbury or something, I will allow that. But simply to have the benefit of views of people who have been incarcerated in a lot of places about how it is here and how it is there will lard up this record and extend our trial beyond reasonable dimentions and I don't think would advance the constitutional or statutory inquiry to sufficiently warrant that.

I would then have to know why it is that way in Danbury, Lexington, and why it isn't here, and that would get us far afield.

MR. YOUNG: I believe this is a very important asepct of our case. Let me just use one issue as an example.

In summary judgment we moved for an order banning the publisher-only rule. The government resisted that application claiming that certain security interests made it necessary to enforce the publisher-only rule. In part we sought to prove that those security claims were not valid by the fact every other institution --

THE COURT: You are exactly repeating what I said. If they claim that something you want is impossible or unworkable or whatever, then I will let you show that it exists in San Diego or Oshkosh, or wherever. I just got finished telling you that. I will listen to you and invite you to listen to me

Q What was the first date you arrived at MCC New York, or an approximate date?

A That would be in September of 1975, sir.

Q Where were you housed? Which unit?

A That would be just overnight or a two-day stay. I was housed in a room on 9 South.

Q When you then left MCC New York when did you return?

A I went back to San Diego and came back when I was done in San Diego, which would be October-November, 1975.

Q Where were you housed when you returned?

A On the balcony on 5 North.

Q What do you mean by on the balcony?

A Well, just that. There is a balcony area which houses offices. The building was crowded at that point of time, I assume, and there were eight or ten of us literally housed on the balcony of 5 North. We did not have a room in the unit. It's a unit that has private rooms.

THE COURT: You mean in an open area outside the offices?

THE WITNESS: Yes, your Honor, exactly. Thank you.

Q How long were you housed on that balcony?

A About two and a half months. That was the period of time I was on trial before Judge Pollack of this court. The trial was six or seven weeks, and I was here a couple of weeks prior to trial, so let me make that -- yes, just about two, two and a half months I was there.

Q Were you eventually moved off the balcony?

A About a week before I left I was moved to a room on 5 North, yes.

Q When did you next return to MCC New York?

A I would say I was gone less than a month. September, October, November, 1975.

Q And where were you housed when you returned in 1975?

A The next time I came I was housed in 9 North.

Q Was that in a single room?

A Yes, it was.

Q For how many weeks were you housed there?

A I guess about a month,six weeks, sir.

Q Where were you transferred from there?

A From there I went back to Danbury.

Q When did you next return to MCC New York?

A I never stayed at Danbury more than two or three weeks. I kept coming right back. At the end of the year -- I was here for Christmas so it would have to be some time prior to Christmas. In December of 1975, sir.

Q How long did you stay in MCC New York at that time?

A For about three months.

Q Where were you housed during that period, which unit?

A I started off on 9 North, was moved to 11 South, and -- well, that's it. 11 South.

Q What type of housing is there on 11 South?

A Dormitory style housing, sir.

Q You said you stayed here for approximately three months. That would take you until about March of 1976?

A Yes.

Q And when did you next return to MCC New York?

A Again I was away for a very short period of time, a fast trip to California and back, and a fast trip to Danbury and back, and the middle of April I went on trial before Judge Pierce in this court, so that would be the middle of April, sir.

Q Where were you housed then?

A 11 South, and eventually transferred to 11 North.

Q How long did you spend in the 11 South dorm?

A A couple of months.

Q And then you went to the 11 North, which is a residential unit?

A Yes,sir.

Q How long did you stay in 11 North?

A About a month, six weeks.

Q Then you were transferred out of MCC at that time?

A In late September I was transferred from the MCC to Sandstone, Minnesota. Actually, I was transferred to Allenwood on a Thursday, but there was a change in my designation, I came back on the bus that Friday, spent a weekend at the MCC on the balcony in 11 North, then that Monday morning, which was Yom Kippur, I think it was September 30th, I was moved back to Lewisburg en route to Sandstone, Minnesota.

Q How long did it take you to get from MCC New Yotk to Sandstone?

A A little under two months.

MR. SCHAFFER: Objection.

THE COURT: Sustained.

MR. YOUNG: The amended petition specifically raises issues concerning the delays in transfers from one institution to another. I will refer your Honor to --

THE COURT: Delays in transfers? You mean the time it takes to go from here to there?

MR. YOUNG: Yes.

THE COURT: I will strike that from the petition. I can't run the whole prison system in ruling on a case from the MCC.

MR. YOUNG: I would point out that both the Attorney General and Mr. Carlson are named parties in this action, and the lawsuit -- obviously nobody can litigate those issues if it were limited ot one institution.

THE COURT: They certainly could, but this case keeps growing and growing. I didn't notice that, I never had any discussion about it, but I am not going to go into the question in this case of the way the marshals handle transportation.

I will say for the record that sitting here for 11 years I have been made aware that it is a big problem in itself and you could have an interesting lawsuit about it. I will not allow it to be latched onto this lawsuit, which grows in a rather frightening fashion because of the excessively creative counsel I appointed to prosecute it, and for that I am grateful, but enough is enough. I am not going to hear that.

BY MR. YOUNG:

Q You testified that you spent I think one night on the 11 North balcony and then you were transferred to Sandstone?

A Friday night, Saturday night, Sunday night, and left on Monday morning, sir. Three nights. I got back on Friday and left on Monday morning.

Q When did you next return to MCC New York?

A The last week in November, sir.

Q November, 1976, correct?

A Correct.

Q Where were you housed when you returned to MCC at that time?

A 11 South.

Q And have you continued to reside there until the present date?

A I did on 11 South from my retunr until today, sir.

Q By the way, could you describe briefly the structure of 11 South, what it is comprised of?

A Six dormitory units on two levels, one above another; three sections with two dormitories, one on top of each other, and dayroom that is identical to the dayrooms on all the other residential areas. There are telephones on the far wall of the dayroom in clusters of two and two. There is a television set out in the dayroom against -- in one corner, a pool table, and a ping-pong table,

The dormitories themselves each contain 10 double bunk-type beds, three -- and as of a couple of days ago three and four tables, various plastic chairs. In the dormitories themselves there is really nothing except the double -- the twin-type beds, 10 twin beds. There are cabinets of hospital-type nature with pull-out drawer on top and an area to open at the bottom. There are no other furnishings in the dormitories themselves.

Each dormitory has its own bathroom, which has one commode, one urinal and two wash basins.

That's really about the total furnishings I can think of. Is that what you wanted, the furnishings?

Q Yes.

witness's subjective feelings or response is to conditions we are challenging.

For example, we state in our amended petition that overcrowding has certain adverse effects on the inmates who are subjected to it. For example, paragraph 17 states, "Overcrowding" --

THE COURT: If you want him to say how he feels about I will hear him briefly. Is that what you meant by it?

MR. YOUNG: Yes. I wanted his response as to how it was to be housed in that unit.

A It's depressing. The facilities aren't adequate. The unit wasn't meant to hold 120 people. It's depressing for lots of reasons. There is a total void of privacy. It's virtually impossible to read or write or do anything that would be a normal function to pass time in a holding area such as the MCC. The common area is noisy to the point where it's impossible to eatch television or to think seriously while you are on the telephone. The beds are less than three feet apart and the bunk beds themselves present various problems because it is impossible to sleep when your partner isn't sleeping, so to speak.

The bathroom facilities are inadequate and frequently dirty because they are constantly in use.

The entire thing is depressing and far inferior to the other living quarters.

MR. SCHAFFER: At this time the government would like to object to the testimony and move to strike testimony of a conclusory nature, such as it is inadequate, it is too crowded, and this type of conclusory testimony.

THE COURT: There is no jury here. I will sort that out.

MR. YOUNG: Maybe we need get some definition as to what will be admissible in terms of the inmate's subjective reactions to the conditions. We feel these are the underpinnings of the entire case.

Your Honor's previous statement that you would only allow limited examination, and Mr. Schaffer's repeated objections, lead me to the question as to how far I can go into issues.

THE COURT: You will just have to feel your way. If this is the underpinning of your whole case you are in great trouble. If you are going to get a lot of prisoners coming here to tell me that the Waldorf is depressive, inadequate, filthy, and so on, they are not going to win.

You have asked me to go look at the prisoon. You can let them tell their conclusions under oath about how it feels to them, but let's not pretend to each other this is the foundation of your case because I assume it is not.

Q Mr. Gardner, in your answer to the previous question you stated that one of the adverse effects of this overcrowding was that you couldn't sleep. Why can't you sleep on occasion in this facility?

A Because you have people whose habits differ from other people living together with no control whatever. There are radios that go until 2 o'clock in the morning on stations that some people would not find soothing. There are card games that go until the middle of the night. There is no control. Different people of different habits. Some people like to sleep during the daytime and be awake at night and those people tend to keep up the people who don't want to be awake at night.

There are no set standards. I have never been in an institution where you had to wear plugs because the radios blast all night.

The particular beds are ancient and when one person turns it wakes the others.

Q You also stated in your answer that the number of people housed in the dormitory creates a strain, or I forget the exact words you used, but create a problem with the use of the bathroom. Can you be specific on that?

MR. SCHAFFER: Objection, your Honor. I don't think there was any testimony to that effect and the question is leading.

THE COURT: I don't think so.

A As I said, there is one commode and one shower. Now, for an hour before visiting starts you literally wait on line for the shower the way you would wait on line for the telephone, something else I have never seen before, and the commode is the same problem. You see two or three people waiting on line. People tend to want to do things at the same hours because events occur at the same hours.

People come down from the roof and there will be seven people that went to the roof that all want to take a shower at the same time.

There is one commode and one shower and it presents a problem.

The meals at the MCC require that there be 20 commodes immediately after eating the meals.

MR. SCHAFFER: Objection and move to strike.

MR. YOUNG: On what basis?

MR. SCHAFFER: I think the answer is unresponsive to the question. It is also opinion testimony and it is frivolous.

MR.YOUNG: He is explaining instances when the bathroom needs to be used.

THE COURT: I will allow it.

Q Are there any other effects that you know of of having 120 people housed in the dormitory, any other adverse effects?

A Any other adverse effects? We are not talking about the bathroom? In the dormitory?

Q The dormitory.

A There is clearly a -- the major effect that I haven't mentioned I think is the tension that it creates. That many people, when the count is 120, which it has been lately, you can always feel the tension, you can almost know how many people are there by the attitudes and such. There is constant fights and constant trifling over little things, such as the telephone. Not fights over significant things, for significant reasons, but over little things because there are just too many people, too many ethnic groups that tend to group together, and too many petty disagreements because there are just too many poeple for the facilities to be able to comfortably utilize the facilities that are there. It leads to all kinds of psychological problems. The dormitories become -- excuse me.

MR. SCHAFFER: Objection. I think this type of testimony as to tension, as to matters of that sort, is [illegible] vague and so conclusory and so filled with opinion testimony it should not be admitted. Surely the subjective feelings of this or any other inmate, regardless of constitutional standard, there wouldn't be a prison in the world would meet the standards.

THE COURT: It's a nonjury case. I have told you once I am going to sort it out. You can argue about what is relevant and what is conclusory in your final briefs. I think we will get done faster if you mostly let it come in, except when something really vitally injurious is happening. Let's move on.

MR. SCHAFFER: May we enter at this point a standing objection to that type of testimony, and unless there is a vital reason for objection we will not raise it?

THE COURT: All right.

BY MR. YOUNG:

Q Mr. Gardner, could you explain to me how you receive mails in the dormitory unit?

A When the food cart comes up to the 11th floor, to 11 South, we are locked into the respective dormitories we are housed. The kitchen crew sets up the meals and we are allowed out one dormitory at a time. We go to the kitchen area, and take our trays and bring them back to the dormitory, and then are locked into the dormitory again for purposes of eating. Some time after we are done eating we are unlocked again for the purpose of bringing the trays, the empty trains, and dishes and such out to wherever they are being collected near the kitchen.

Q How many dining tables are there in each dormitory unit?

A Generally three. In my particular dormitory unit an additional fourth table was put in.

Q When?

A Thursday of this past week. Four days ago. They moved a fourth table in. No addiitonal chairs but a fourth table.

Q How many people can those tables accommodate?

A Four.

Q So the average accommodations for sitting down to eat meals in each dormitory would be how many could sit at a table to eat a meal?

A Twelve, except a couple of days ago in my particular dormitory an additional table was brought in. I don't see an additional table in each of the other dormitories. There is not really room to seat -- to use the additional table anyway because there just isn't room for four tables in the dormitory. In between the bunk beds you can't put comfortably four tables and there aren't enough chairs in any case.

The three tables, the standard arrangement we had until a couple of days ago has been three tables for 12 people and the balance of the people eat on the beds or on their laps or there are some wood chairs that are very uncomfortable to sit on and people use as dining table while they sit on the bed. All 20 have to eat at the same time because we are unlocked at the same time. It is not as though we could stagger our eating, so to speak.

Q Could you describe the staff that is available to the dormitory unit?

A . The one I was on for that period of time was on 5 North.

Q And you were also on 11 North for three days, is that correct?

A That's correct.

Q Would you explain what the conditions were under which you were housed on the balcony?

A We were given a cot, which is exactly that, no mattress, a green cot with legs that folds out, and we sleep on that cot. I kept my belongings in a cardboard box, which I traveled through the MCC with.

During the daytime hours we were required to fold up our linen and fold up the cot and kind of move it into a corner, so we really had no area. Our things were just sort of pushed over to a corner during the daylight hours.

During the evening hours we would put our cot out, so to speak, and put a sheet on top of it and a cover on top of that and sleep as best we could.

Q Approximately how many people were housed in that balcony area during a long period? Let's restrict ourselves to the discussion of the long period.

A Between seven and ten.

Q Pardon?

A Between seven and ten.

Q What bathroom facilities did you have available to you while you were housed in this commons area?

A There was a bathroom up there on the balcony, which I believe is generally intended for staff, which was open to us. As far as the shower is concerned, we used to go down into the unit and use the closest unit shower that wasn't being used.

Q And in in terms of that bathroom, what facilities were available inside that bathroom?

A A sink and commode.

Q Are there any windows opening directly onto the balcony area?

A No. The glass front of the offices. But there are no windows any place.

Q Did you have an opportunity to, say, control the lighting in the balcony area? Could You turn it off when you wanted to go to sleep?

A The lights are on 24 hours a day. It required mechanical services, coming up and going into a closet on the balcony area and throwing switches. That closet was generally locked.

Q You stated that this was in a modular unit which otherwise consisted of individual residential rooms, is that true?

A Yes, that's correct.

Q Were you ever allowed to use one of those rooms, for example if you wanted to get away or be alone?

A Oh, no. They were assigned to people. Those rooms belonged to the people who were assigned to them.

Q Were any facilities provided to you where you could be alone?

A No.

Q What were the adverse effects of being housed in that balcony area?

A During the daytime you had absolutely no place to go. I mean you were being housed no place. Your common area was all you had, with nothing to go into, not even a dormitory. You didn't even have a bed to sit on. You would sit on the floor and read. It was impossible to accomplish anything.

Q Did you encounter any problems, for example, in your use of the toilet facilities?

A The same problem, that it was inadequate. There was one toilet and it would be locked half the day and you would wait on line to use it.

THE COURT: Would you talk louder?

THE WITNESS: Just the fact that there was only toilet available, your Honor, and it was locked when someone was in it and you would simply wait on line to use it.

Q And did you encounter any problems in keeping track of your personal belongings or did you observe anybody else encountering problems keeping track of their personal belongings because of this type of housing?

A I didn't have trouble keeping track of them. I had trouble utilizing anything. Everything had to be stored in a box, which had to be closed during the daytime. There was no shelf to put anything on, no dresser to put anything in. It was very hard to be able to utilize your own property.

Q All right. Any other adverse effects of being housed in the balcony area that you can think of at this time?

A To me it was terrible. I was on trial while I was in the balcony area and it is a tiring experience, as counsel well knows, and it is virtually impossible to sleep because of the constant traffic.

Where I set up my cot was directly opposite the unit manager's office, and she was a lady, Miss Scozzari, at the time, a female unit manager, and it was virtually impossible to get undressed to take a shower or do anything, such as lie down and take a nap, until she was gone and the offices were all closed. Then you could fold your cot and do something a little more normal.

Q All right. I'm sorry. There were a couple of questions relating to the storm I forgot to ask you.

Returning to the period you lived inthe dorm, have you observed inmatestaking any steps or making any efforts to secure privacy for themselves in the dorm?

A Yes, sir, I have.

Q Could you describe what those efforts consisted of?

A Frequently people make their beds into a tent. I don't know how else to describe it. They take an extra sheet or blanket or whatever they can get hold of to hang something down three sides of it and they try to block themselves off from the world. This is a frequent occurrence. You see this in every dormitory every night.

Q Are they permitted to do that?

A No.

Q And how do you know that they are not permitted to do that?

A There is a memorandum regarding sanitation that was posted not too long ago which specifically states that they should not do that. I've seen the officers taking their morning tours taken down the tent-type arrangements on a regular basis.

Q Have you ever witnessed any fights or other violent activity in the dormitory?

A Yes.

Q Do you know what the causes of those fights were from personal knowledge?

A Generally, fights arise really over trivia, over just tension from different groups of people. A word could spark a fight, or someone taking someone else's place on the telephone line can cause a fight later on, or someone being in someone else's way or someone taking a shower before someone else. Generally it is not a serious matter; it is usually trivia.

Q In the dormitory rooms themselves, what are the lighting accommodations?

A There are lights in the center of the dormitory, where the tables are, which are light bulbs that we stand on a chair and turn one way to turn on and turn the other way to turn off.

Then, over the beds there are nine light bulbs which have switches to be turned on or off which, when the dormitories were first opened, there were beds in each of those positions so that you could turn the light on to read at night without disturbing anyone else.

The light is shaded by a circular mechanism that points directly down on the bed.

Under the current arrangement, we still have the same lights, but they no longer serve the same purpose.

Q What do you mean, they no longer serve the same purpose?

A Well, firstly, because of the number of beds, they no longer come down at a bed. Secondly, they pbviously can't reach the lower beds through the upper beds because it is a direct ray of light and the upper beds aren't under them. So they shine down in between the beds.

So people lean over out of bed to read and it shines really on -- one light would have to be used for two beds. But the lower bed is very difficult because obviously the light can't come through.

Q What happens then when you say the one person on an upper bunk wants to read and the other person sharing that light wants to go to sleep?

A Like when I don't like to listen to rock and roll. You wait for the other person to turn it off, 12.30. Again you go through the process I explained before. You are unlocked once to get your meal and you come back, you are locked in and let out for the trays and locked in again. You go through that process at every meal.

Then we are let out after lunch until four o'clock count. We are locked in again at four o'clock, and we stay in at the four o'clock count until dinner, which generally comes up at 5.30, a quarter to 6, what-have-you.

And we'll go until 6.15. From about four o'clock, the start of the four o'clock count, until 6.15, 6.30, when supper hour is completed, we are locked in.

We are then locked in for the 7.30 count, which takes about a half hour because of the sanitation cleanup in the common area. The sanitation groups cleans up the common area.

From about 7.30 to 8 we are locked in. Then we are locked in at 11 o'clock for the evening, with the exception of Friday and Saturday. Friday and Saturday evenings we are locked in generally between 1 and 2 in the morning.

2 Q Taking a normal weekday, what is approximately the total number of hours that You are locked into that dormitory room during the day? By "locked in" I don't

12.30 to 3.30 seven days a week.

Q What do you mean, "According to the regulations"? Is it not in fact open during those hours.

A Visitors are generally chased Out 15 minutes before the 3.30 hour and at 3.15, and I've never seen anyone come up at 12.30, because they don't start processing until 12.30, generally.

So visiting is supposedly between 12.30 and 3.30, but it would be much more of a reality to say between 1 and 3.15.

THE COURT: Would you forgive me a second, please?

MR. YOUNG: Yes, sir.

(Pause.)

THE COURT: All right. Thank you.

Q What is the effect on visiting of having 120 people using that one visiting room?

A It is overcrowded to the point where visitors who come a little late are often turned away. The overcrowding causes termination of visits. After an hour on a weekend you can virtually count on having your visit terminated.

The visit room is noisy. The ventilation system in the visiting room is worse than any place else in the building. It is hot, uncomfortable, it is noisy, it is overcrowded to the point where you can expect your visits to be terminated generally early during the weekend hours, it is unpleasant, you see all kinds of arguments, unpleasant people coming in, unhappy. I think the atmosphere there contributes to it.

Q Could you tell me what recreational equipment is available in the 11 South dormitory unit?

A We have a pool table, a Ping-Pong table, and, again, quite recently, a small universal gym-type arrangement was put into the TV room.

TV is recreation. We have two television sets, your Honor. One is in an enclosed room, which I just referred to as the TV room, which also has a little universal gym arrangement now, and the other TV room is out in the open, in the day room -- the other TV set is out in the open, in the day room.

So we have two television sets, this little gym arrangement, the pool table, and the Ping-Pong Table.

Q Is there any area of the dormitory unit which is set aside to allow inmates to be by themselves?

A No, sir.

Q To be alone?

Are you allowed to move to any other area of the Metropolitan Correctional Center where you can be by yourself?

A No, sir.

Q All right. I presume that there are certain occasions when you are allowed to leave the dormitory unit. Could you tell me what those occasions are?

A You are never allowed to leave without an escort. To go to sick call in the mornings, an escort will come up and take you to sick call. To go to court. And catholic mass is on an the north side. People are allowed to cross over for that 20-minute period on Sundays.

I really can't think of any occasion when you are allowed out of the unit other than to go to court or sick bay.

Q What about to go to the roof?

A To go to the roof, absolutely.

Q All right. How frequently are you taken to the roor, or given an opportunity to go to the roof, say during the last month?

A I would say about four times a week on the average, for abour an hour each time.

Q How many times have you gone to the roof during the last month?

A Once.

Q Is there any reason why you haven't made more use of it?

A Well, several reasons. Firstly, the roof schedule generally coincides with the visiting schedule, and if you are expecting someone to visit you, you are not going to want to go up to the roof because there would be another hour involved In getting down from the roof to entertain your visitor.

The schedule is not adhered to. Very often -- the day I went to the roof last week was a beautiful, sunshiny, 50-degree day and thefe were seven of us up there. People just don't know when it is going to happen. The officer opens the door and says "Roof," and they are gone at the blink of an eye. If you are in the dormitory, you won't know that they are going up to the roof.

I might have gone on other occasions if I were of the fact that someone was going.

There is very limited activity on the roof and the roof area itself is not that gratifying to be in, actually. It is walled in and a lot of the fellows feel, as i do, that it is more like a prison than even down in the jnit. You can't see the buildings or see anything through the roof. The only advantage is that you can get fresh air.

Q Except for your visits with me, which have taken place in a private room, how many times have you left the residential unit of 11 South, say during the last month? You testified you went once to the roof.

A I went once to the roof, I would say, in the last month. I had one other attorney, Stanley Fisher, who managed to get a private room to bring me down for an attorney visit. I would say would be it.

Q All the rest of the time you've spent in the dormitory unit?

A That's correct.

Q All right. What are the effects on you, the adverse effects on you, of being confined to your dormitory unit for such extended periods of time?

MR. SCHAFFER: Objection.

Q (Continuing) For the periods of time to which you've just testified?

THE COURT: Is that the ground of your objection?

MR. SCHAFFER: Yes, your Honor.

THE COURT: Okay, your Honor.

A Depression, primarily. I think the basic effect psychologically, Michael, is disgust with yourself when you find you are unable to function as a human being.

I am a prolific reader, and here is the first opportunity I've had in my life to really sit down and read, and I haven't been able to read a book in months. You get very upset with yourself because it is basically impossible to function as you would like yourself to function, even in a prison, or to function normally.

You must interact with other people. You have to keep your emotions pent up. There are times when, you know, someone would like to cry or pray for ten minutes or do something that people are prone to do in jail, and basically in this particular situation it is virtually impossible to do that.

I think the basic effect it has had on me is really depression.

MR. YOUNG: Your Honor, I would ask permission on this particular issue about confinement, because since MCC is somewhat unique in the manner in which it confines people to their units and provides services for them there I would like to ask Mr. Gardner to compare the experience of living at MCC under that particular condition with the experience that he has encountered in other institutions which have permitted him more movement.

I feel it is very important because this is a rather new type of confinement, method of confinement, and

I feel that by comparing that to more traditional forms of confinement we could gain some enlightenment as to the positive or negative effects.

I am asking your Honor to retract what you said about not comparing it with other institutions to the extent of this particular issue, since it is a rather unique issue here. I would like to ask Mr. Gardner a series of questions concerning other institutions that he has been in and the amount of movement that he has been afforded there as compared with here.

THE COURT: I'll allow that.

MR. YOUNG: All right.

Q Mr. Gardner, could you describe to the Court briefly some of the other institutions that you have been in and specifically confining yourself to the amount of movement that you are allowed in those other institutions, say Sandstone?

A Sandstone and Danbury as a group are what are called FCI's, Federal Correctional Institutions, in the prison system.

Even on close custody, which is what I had when I first arrived, one has virtually absolute freedom of movement throughout the institution with the exception of count hours and the hours when you are locked in.

There are large outdoor yards and the buildings are built around those yards. If someone has to go to sick bay or to the law library to read a book or to the general library to find something to read, or to take a course or to do whatever one might be doing with the time to pass the day, you simply walk out the dormitory and go. You know you have to be back in the dormitory at a certain hour, the four o'clock count, and for eleven o'clock to be locked in.

But the closest custody, the closest possible custody person in that sort of an institution has the same freedom as a minimum custody person. You go when you have to go. The doors to the dormitories are open with the exception of rhe count and from eleven o'clock in the morning until six-thirty, a quarter to seven, when they are open for breakfast. So that there is really no comparison.

THE COURT: You meant eleven o'clock at night, didn't you?

THE WITNESS: Yes, sir.

THE COURT: When you are locked in.

THE WITNESS: For those hours you are locked into your dormitory. You have freedom of movement just within the area where you live. But at all other hours the front door is open and you just go where you have to go within the compound.

There is no comparison. You simply go on your own where you are going. If you want to get some fresh air or go to the hospital or do something, you simply do it.

The other MCC's, Chicago and San Diego, Chicago more noticeably than San Diego, also have a good deal more freedom of movement and a very different sort of attitude.

The elevators that we see, that they take us with an escort on for sick bay or to see you, Mr. Young, or to go to court, are considered secure elevators in that building and inmates do not have to have an escort to go where they are going, as long as they are en route to where they are going.

You have to tell the officer, and the officer will call sick bay and say "What time should I send him?" and then open the door and send you at that time. You would have a lot more freedom there.

But in the other MCC's, like this one, you know, basically you are confined to your unit except if you are going some place that requires your movement, in which case you get the officer's approval.

Comparing that to the MCC in New York, I have never been allowed movement throughout any place in the MCC in New York without escort.

Q Do you frequently have to wait to have an escort come to take you to the places you are allowed to go to?

A Yes.

Q Could you give me some estimate of the period you have to wait, or could you cite specific examples when you have had to wait?

A I think the most glaring, the ones that come to mind first, are when I was on floors other than where I am now, other than 11, or other than the floor where attorney visits were held, waiting to be brought to the visiting room to see an attorney in the evening. It was always the most upsetting.

We have a count at four o'clock and generally it doesn't clear until a quarter to five, five o'clock. If you know that there is an attorney waiting, it could be five-thirty, a quarter to six before someone comes to take you up to the visiting room where that attorney waits, and at six-thirty visiting is over.

So that's one thing that you anticipate, that you always remember, those delays, because you are keeping someone waiting, plus the visit is cut short as a result of it.

I've had occasions when I've had appointments with medical personnel on the second floor in the hospital area, where I've been brought down by escort so late that the doctor I had the appointment to see was no longer seeing patients.

Escort is always a problem. There is generally one officer on internal security and he might be given a list of ten people to bring from one place to another. Very often they don't call ahead, so someone is not expecting him to come.

if he is held up picking one inmate, if you are the seventh or eighth down on the list you could have a 45-minute to an hour wait after the attorney arrived or after the doctor's appointment was scheduled or after whatever it is that you are going to.

MR. SCHAFFER: I would like to object to this testimony to the extent that Mr. Gardner may be unclear from the language he is using, testifying to things that he has no personal knowledge of. He talks about you may have to wait or it may happen. Can we limit the questions and answers to Mr. Gardner's own persoanl experience?

MR. YOUNG: All right.

Q Mr. Gardner, have you personally experienced such delays or observed other inmates experiencing such delays?

A I personally experience such delays on numerous occasions.

Q When you were at MCC in Chicago, if you had an attorney visit, how would you proceed to the atttorney visiting area?

A You were given instructions to take the elevator down to the third floor, where they had a series of rooms. The third floor or the second floor, I'm just not certain any more. You were given instructions to take an elevator down to a specific floor, one of the lower floors, where attorney visiting rooms were set up.

When you got off the elevator, there was an officer in that area who directed you to your attorney visit.

Q So, in other words, as soon as your unit notified you that you had an attorney visit, you could leave immediately and go down to that room; is that what you are telling us?

A Yes, sir.

Q All right. The other institutions that you've been in, tell me some of the units that you are free to move to. You mentioned the yard at Danbury, you mentioned the medical facilities and the other visiting rooms at MCC Chicago. Could you describe some of the others?

A In the FCI, Danbury or Sandstone, you went by yourself for a visit to a medical facility, to any kind of a program to get education, or anything from Alcoholics Anonymous to whatever you happened to be partaking of, to your own work assignments, to the chapel, to any recreation facilities, such as a movie or what-have-you.

You basically knew what the schedule was because it was posted, and if you chose to partake in something, you simply went.

THE COURT: Did you have a dining room to eat in?

THE WITNESS: Yes, your Honor. Thank you.

THE COURT: I visited some of these places.

THE WITNESS: The dining room was open during specific hours for each of the three meals and you went there during those specific hours. The dining rooms in those institutions are cafeteria style.

Q How about libraries?

A The same thing. In the education department typically in these institutions there is a general library and a law library. Again, the hours are well known and

I think you can argue these comparisons in your brief. And, Mr. Schaffer, I will expect you not to stick in the bark of technicalities. If he says in his brief "I'm comparing this with any other prison," whether it is Lewisburg or Atlanta or whatever, "just to give a sense of what the physical experience is like," I will expect you and the respondent, Mr. Carlson and others not to stick to the technicality that it is not strictly in evidence.

You can argue that it is immaterial as a matter of law, but I hope I can count on you, when they say in most Federal prisons you walk to the dining room and you sit at tables for four or whatever, when you show this to Mr. Carlson and he says, "Yes, that's the way it is," not to say that those facts cannot be noticed by the Court.

Can I take you that far with me?

MR. SCHAFFER: Yes, your Honor, as long as the facts are accurate.

THE COURT: Right. Then, understanding that, and understanding that I have grave doubt as to the legal significance of this, I am going to sustain the objection.

Q Mr. Gardner, you entered and exited MCC, from your prior testimony, approximately a dozen times, I would

A The visiting room that we described before on the unit.

Q In other words, the same visiting room that is used for general family visits?

A Correct.

Q And what has been your experience during those visits in terms of your ability to communicate with your attorney? Could you describe the conditions surrounding those visits?

A Surely. Firstly, if an attorney comes during the regular 12.30 to 3.30 11th floor visiting hours, he is allowed in and again put into the general visiting area where regular family visits are going on.

11 South has a very bad situation because of the number of children running around the amount of noise, the crowded nature of the visiting room. It is extremely difficult to hear when you are trying to have a serious discussion.

In the evenings the problems are still the same, although a little bit different. You still have the privacy problem because you are in one common room. Numerous people are visiting with their attorneys. Other inmates are just standing around because the visit has been completed and they are waiting for someone to come and take them out. You are totally devoid of privacy.

The acoustics in the visiting room are terrible. You generally have to speak up to be heard. Very often what you are trying to say is private and that presents problems.

The escort service comes into this. As I tried to say before, one of the major problems is the short hours. Visiting in the evenings for attorneys is from 4.30 to 6.30. If you want to avoid being with the children and the families and the really serious crowded conditions of the afternoon, they have to come from 4.30 to 6.30.

And we have a count that starts at four o'clock that very rarely clears by four-thirty. It might clear at a quarter to five, it might clear at five, depending upon how smoothly things go.

The attorneys are not even processed downstairs --

MR. SCHAFFER: Objection, your Honor. How would this witness have knowledge of when the attorneys are processed?

THE WITNESS: From conversations on a daily basis with the attorneys.

MR. SCHAFFER: That would be hearsay.

THE COURT: Yes. Sustained.

Q Just based on your own personal knowledge. You realize you are not allowed to communicate with us what other people have told you.

A I constantly experienced being brought to the visiting room about 5.15, 5.30 in the evening to have an attorney in a cranky mood because he has been waiting for an hour to get in to see me and having the visit terminated at 6.15, 6.20, depending upon the officer.

Q To what extent, if any, have the conditions you've just described affected your ability to prepare for criminal proceedings?

A Very seriously.

MR. SCHAFFER: Objection.

MR. YOUNG: Your Honor, I think this is totally relevant. It is very relevant and it is also totally within this individual's ability to describe. He knows exactly how these conditions have either helped or adversely affected his ability to prepare for the numerous criminal proceedings that he has described.

MR. SCHAFFER: In view of the fact that Mr. Gardner did not represent himself in those proceedings, it would seem that he is hardly the person with personal knowledge of the extent to which preparation --

THE COURT: But if he is a defendant in a case, he is more than an exhibit. There are things that he may claim that he has to do. Let's hear it and see what it amounts to.

Q All right. Do you recall the question?

A Yes. During the last trial, before Judge Pierce, just six months ago, my attorney attempted to come up and see me on the average of two or three nights a week at the end of the trial day. I would say we had an average of a half hour, 40 minutes.

He would come straight from the courtroom at four-thirty, a quarter to five, when the trial was adjourned, to the MCC. By the time I was processed downstairs and brought up for the attorney visit, it was generally a quarter to six, six o'clock, and we had a serious problem because I was trying to do work for him and prepare examinations of witnesses, which was a highly complex financial type of case, plus my own examination as a witness on my own behalf.

And it was a very, very difficult situation. I was really not able to get his ideas on the work that I was to do that night.

Q Have you personally ever experienced difficulty in hearing what your attorney had to say during an attorney visit?

A Yes. But that situation is much worse when an attorney tries to come during the general visiting hours and is put into the visiting room with the family visits. Then you have an impossible situation.

One elderly gentleman, an attorney who represented me for a period of time, Sidney Marx, literally had to get up and leave because the children just kept coming over.

When an attorney tries to come during the general visiting hours, it poses very serious problems. In the evening, it depends upon how lucky you are and how crowded the visiting gets.

One visiting room is used for attorney visits regardless of what floor the inmate is on. So the inmates on that floor are lucky. Lately it has been the 11th floor visiting room. I'm more fortunate than someone on 9 or 7, who has to be brought up for the visit. I can get in relatively quickly.

There is one visiting room used for all attorney visits. It depends upon how crowded the visiting room gets and how bad the problem is. I've seen it when there are only five or six attorney visits and you can hear easily and it was not too bad. If you have 12 or 15, You had testified at that time that you had had certain attorney visits in the general visiting room on the 11th floor. Have you had any attorney visits other than visits with myself in any other area of the institution?

A Yes, sir, I have.

Q Where?

A Generally, on the third floor, in a private room provided for that purpose.

MR. YOUNG: I think the U. S. Attorney can stipulate that those are the rooms on the sem-circular area on the third floor as you get off the rear elevator.

MR. SCHAFFER: Yes, that's correct.

MR. YOUNG: All right.

Q How would your visits in those rooms compare with your visiting in the 11th floor visiting room with attorneys?

A Far superior, much better.

Q In what ways?

A Well, you have privacy. You can close the door and converse with your attorney in private. It resembles legal visiting at any other institution in that you have a room and a desk and you can sit and work for a period of time.

Q If it is superior, as you say, then why haven't all your attorney visits been conducted at that area?

MR. SCHAFFER: Objection.

Q (Continuing) To the best of your knowledge.

THE COURT: What is the ground of the objection?

MR. SCHAFFER: I fail to see how Mr. Gardner has knowledge as to why these visits were not conducted at that particular place. Apparently it was a decision made by the MCC.

MR. YOUNG: It isn't necessarily the case.

THE COURT: Do you want to elicit what he was told?

MR. YOUNG: No. I want to elicit whether he has any knowledge himself or whether he made any statements himself which would have induced an attorney to visit one place as opposed to another. In other words, if Mr. Gardner advised his attorneys --

THE COURT: All right. Let's see what he knows and what his purported basis is and I'll decide whether it is competent.

MR. YOUNG: All right.

Q Do you have any personal knowledge as to why your visits were not all held in the private rooms on

A Yes.

Q Can you describe what those problems are?

A The first one that you encounter in such a visit is, again, the delay in being brought down to the third floor area. I would say that the room is physically adequate, with the exception of the fact that there is no ventilation that functions in those rooms. And the ventilation ducts are empty. You can hear the conversations in the next room. I don't know whether it is in the process of repair. If so, it has been for an extended period of time.

Q For what period of time have you noticed this ability to hear conversations in the next room?

A In the last six months. Over the period of the past six months. At the termination of an attorney visit on the third floor, one has to undergo the same strip-search procedures, generally in the bull pen, that one undergoes when he completes a social visit; the entire strip-search procedure.

Q Would you describe what that includes?

A Describe the strip search, Mr. Young?

Q Yes.

A It includes taking off all of your clothes in front of a member of the corrections staff, generally raising your arms and displaying your armpits, opening your mouth, raising your genital organs, spreading your rear cheeks, showing the bottoms of your feet, having the officer examine your clothing, and then getting dressed again.

Q All right.

A Then you have the problem of the delays in the bull pen relative to getting back up again. But there --

THE COURT: Delays in what?

THE WITNESS: The holding area, your Honor, on the third floor, where you wait again for an escort to go back up. And when you get back up, you have another strange problem because the vast majority of the legal visits are held in the general visiting room. The inmate population always suspects anyone who goes down to the third floor for a visit, because that is commonly thought to be the place where government agents and government attorneys interview prospective witnesses and such. So anyone having attorney visits down there, since it is not the general procedure to have a private room, is always suspect by the inmate population.

MR. SCHAFFER: Objection.

I believe there is a log on the third floor so when they get to the third floor they would sign in. But there would be no indication in that log as to the time they arrived in the lobby area.

MR. YOUNG: There is also no indication, your Honor, as to when that person gets to see his client after he signs into the book.

MR. SCHAFFER: That is also correct.

THE COURT: I think what I'll have to require you to do, Mr. Young, is to try to select a lawyer or two reasonably accessible. I'm not going to make you swear that they are typical, but let them report on this experience.

MR. YOUNG: Your Honor, we are prepared to present evidence from lawyers on that.

THE COURT: All right. Then let's stop going at it through hearsay.

BY MR. YOUNG:

Q Only answer according to things that you know from your personal experience. Okay? Not what somebody else told you.

Have you ever arrived at the third floor area for an attorney visit and not been able to have a vacant room to conduct that visit in?

A Yes, sir.

MR. SCHAFFER: Objection. These questions are getting excessively leading. Mr. Young asked him initially what the problems were, and now he is going through his own list of problems.

THE COURT: Well, I'll allow it. I'll remind Mr. Gardner that he is under oath, and leading or not he must tell us under that oath what he knows.

THE WITNESS: Yes, your Honor.

THE COURT: You are saying that happened to you?

THE WITNESS: Yes, your Honor.

Q Could you describe the instance or instances when that did occur?

A On one occasion I met with an attorney, Donald Nawi, who was appointed for the purpose of doing my direct appeal, on the third floor. There was no vacant room. We conducted our visit on the couch outside of the lieutenant's office, with all kinds of clusters of staff and people standing around.

There was less than no privacy. There is an orange couch on the third floor around the corner from the receiving and discharge area where the lieutenant and various other administration officials have their office. We actually conducted our meeting there.

In other cases I've been kept waiting while a room was being -- while we were waiting for a room. In that case we actually had our meeting out in the open on that couch.

Q On that occasion, did you ever get a private room?

A For that visit, no.

Q Approximately how long did that visit last?

A Forty-five minutes, an hour.

Q Mr. Gardner, have you ever had an attorney visit cut short?

A On the third floor, I've had the officer come into the room and ask us to end visits, saying that other people are waiting for the rooms and we were in there long enough, yes.

Q And how frequently has that occurred?

A Oh, on numerous occasions.

Q Could you tell me the approximate time that your attorney visit lasted before it was terminated on any of those occasions?

A On one specific occasion that comes to mind I would say it was less than an hour.

You are talking about the third floor, not the general visiting?

All attorney visits there, of course, are terminated at 6:20, 6:25, depending on the visiting officer

Q You are referring now to the 11th floor visiting room?

A Yes. In the general visiting room where the general attorney visits are held, all attorney visits are terminated at the specific time, whether you are finished with the business that you are there to discuss or not.

THE COURT: Terminated when?

THE WITNESS: They are all terminated at the same time, prior to 6:30, Judge.

THE COURT: You mean when visiting hours end?

THE WITNESS: Yes, sir.

THE COURT: You are talking about the --

THE WITNESS: That is the regular visiting room. On the third floor we have had an officer come in and interrupt a visit because he needed the room for another attorney that was waiting.

BY MR. YOUNG:

Q Have you ever been advised by a member of the MCC staff that you would not be permitted to take legal papers to an attorney visit?

A Yes, sir.

Q Could you describe the occasion or occasions when that happened?

A That's happened when I was attempting to go into the general visiting room for a legal visit. On numerous occasions certain officers just aren't aware of the fact that it is impossible to have a legal visit without bringing papers both ways, into the visiting room and back out.

There is one officer that frequently runs the visits that won't allow you to bring a pen, a 20-cent, commissary-bought ball point pen, into the visiting room for a legal visit.

You always go through a problem of bringing discuss a matter with your attorney that you have needed to discuss with him?

A Yes, sir.

Q Could you describe those instances?

A Well, the prime instance that comes to mind is a recent meeting I had with an attorney who was preparing a motion to reduce my sentence under Rule 35, the sentence I am serving currently that Judge Pierce here imposed.

Q And where did that meeting take place?

A In the general visiting room during regular visiting hours.

One of the issues that we hoped to raise in that motion is the issue of my cooperation in other matters with the federal authorities, with the government, and that is simply an issue that you cannot discuss with your attorney in the general visiting room bwcause people overhear it and repercussions will be enormous. It is just the sort of thing that you cannot discuss in that visiting room.

Q Based on the conditions that you described yesterday and today, do those conditions deter you from wanting to have visits with your attorney at MCC?

example, in this instance -- how it inhibits their Sixth Amendment right to communicate with their attorney.

THE COURT: I frankly doubt that I am going to be able to make anything much of somebody saying, "Yes, I am deterred from having visiting," but I will allow it for what it is worth and I will hear argument about it later on.

Q All right, would you answer the question.

A Yes.

Q Mr. Gardner, you gave some testimony yesterday concerning personal visits as well as attorney visits.

I would like to ask you a few more questions in that area.

Where does the furniture in the visiting room come from?

A Well, the chairs that we sit on to have our visits are the same chairs that are in the dormitory the rest of the day, so around 12:30 various people who are expecting visits collect chairs from the dormitory and bring them out to the visiting room area, or in front of the visiting room area, waiting for the visits to arrive, waiting for the family and such friends to arrive, and those chairs are then brought into the

Q Well, describe for me the instances when you haven't had any chair or couch to sit on.

A Actually, I think you were present at one visit where we were standing leaning on the radiator for the first half hour or so waiting for someone to vacate chairs.

There simply aren't -- there simply isn't enough room in that visiting room to have chairs for all the people and there just aren't enough chairs. As I say, they come from the dormitory areas.

Generally, you just stand in the corner and wait for someone to get up and leave if the visiting room is crowded.

Q Are there any food or drink machines in the 11th floor visiting area?

A I have never seen any food or drink machines in the 11th floor area.

I don't know whether this is proper testimony, your Honor, but when I went back to the MCC yesterday to my dormitory I was told by inmates and by the officer that was there that yesterday, while I was here in court, a soft-beverage machine had been installed in the 11th floor visiting room. I haven't seen it as yet.

If it is there it arrived yesterday. But I have never seen any soft-drink machine or food machines in the visiting rooms.

Q You testified earlier that you were at one time housed in the fifth floor.

Did you ever see a soft-drink or food machine on that floor?

A There was a soft-drink machine installed in that floor a short while ago. There was no food machines. Again, that is a recent innovation.

But that has been the only floor that had a soft-drink machine until perhaps yesterday. I don't know.

Q How would you compare visiting on the fifth floor with visiting on the 11th floor in that respect?

A Well, visiting on the 11th floor has a unique problem. We have 160-some-odd inmates on the floor at all times. Visiting is nowhere near as crowded and the visits are not generally terminated as quickly on the other floors where I have resided.

In my own experience there were -- if you had a weekday visit on the fifth floor you very well might be able to have a two-hour visit. Such things are really rarities on the 11th floor. You couldn't expect that on 11 South where you have 120 inmates.

Q Referring specifically to the vending machines, did those have any effect on your visits?

A When I was in visiting rooms where there were vending machines and where you could spend protracted periods of time with your family, I think it had a tremendously different effect than a visit at the MCC.

If you can spend five or six hours with your loved ones and eat lunch together and leave a visiting room, which is what we did at Danbury, you have a different feeling upon leaving than you have after yelling and screaming to be heard for 45 minutes in the MCC visiting room. It is a whole different attitude, it is a whole different atmosphere.

Q How many visitors are you allowed to put on your visiting list at MCC?

A You are allowed six visitors on your visiting list, not six visitors to come at one time. You are allowed a total of six names on your approved visiting list.

Q And those are the people that are allowed to come to visit you?

A Those are the only people that are allowed to visit you, other than attorneys.

a Sunday, you can virtually be assured that your visit is going to be cut extremely short.

45 minutes to an hour is acceptable -- is what we are accustomed to, what I am accustomed to on a Saturday or a Sunday or Friday, also. Friday is equally crowded for some reason on the 11th floor.

On a Monday, Tuesday or Wednesday, you have a better chance of having more like an hour and a half, depending, again, on how crowded that particular day is.

Q Could you describe the effect of those time limits on those visits?

A The effect is to negate any positive effect that visiting could have.

Again, when you spend five or six hours with your children or your mother and your family and you leave, you know, having had lunch and having relaxed and really spoken together, you have a very different feeling than you do after having spent 45 minutes or an hour talking to someone. It is to negate any positive effect that can come from visiting, such as the strengthening of the family ties and the continuation of relationships with people that are on the outside. Visiting here really doesn't serve those purposes.

Q Incident to your social visits, are you subjected to any type of search?

A Yes, sir.

The same trip search procedure that I outlined before relative to attorney visits is standard procedure coming out of the visiting rooms.

Q And what is the effect of that search on your visit?

A Well, to me, it's senseless, it is embarassing, it is degrading.

The effect of it on the visit itself is to tell people not to bother to come unless you really want to see them or need to see them. But that is the effect of the entire circumstances of visiting, really.

Q Could you tell me when --

THE COURT: Is that search made both before and after the visit?

THE WITNESS: No, your Honor. There are a few Correction officers that do that, but generally speaking I would say in my personal experience 45 percent of the time I am patted down going in and going through that entire procedure on the way out.

Q You testified that your schedule for social visiting is 12.30 to 3.30 certain days a week.

A That is correct.

as a BP-9. It is a request for administrative remedy, which is a way an inmate can be heard.

It goes directly to the Warden of the institution. It is a request for a remedy of some problem or incident or an appeal of some action taken by a staff member that an inmate submits to the staff.

Q What is the nature of the request in that document?

MR. SCHAFFER: Your Honor, the document speaks for itself.

THE COURT: Are you offering it?

MR. YOUNG: Yes, I am offering it in evidence.

MR. SCHAFFER: No objection.

(Petitioners' Exhibit 3 was received in evidence.)

Q Mr. Gardner, was there a time --

THE COURT: Wait just a second, Mr. Young.

MR. YOUNG: Yes.

(Pause.)

THE COURT: Okay, go ahead.

Q Mr. Gardner, was there a time in the summer or around August of last year when, in fact, you were denied opportunities to visit with Miss Braunig?

A Yes, sir, there was.

focused here. Whatever Mr. Gardner may think, he is not a lawyer. It should be obvious to you, you work in this building, that neither Judge Pierce nor any one of us would issue an order in the autumn of 1976 that was a blanket direction to the MCC forever that somebody is allowed to visit with somebody.

If we have somebody on trial before us, we may order visits during that trial. But it is not going to help you to have this kind of thing larding up this record. You are talking about a time after January, and I don't think Judge Pierce would presume to order visits that go on forever.

MR. YOUNG: Your HOnor, I am not relying on Judge Pierce's order. My principal reason for going into detail on this particular issue was to show how MCC operates procedurally and --

THE COURT: But you put an exhibit before Me which says "I have a complaint that Judge Pierce's order is not being obeyed."

MR. YOUNG: I am not offering it for that purpose, your Honor. It was also an application for a joint visit. Whether or not Judge Pierce's order was acted on is secondary. The only point I am relying on that document for is that Mr. Gardner did apply

A Yes, sir, I did.

Q I show you this document, which is Petitioners' Exhibit 15 for identification.

A Yes, sir.

Q Is that the document that you wrote?

A That is the document I wrote to the Warden after receiving his letter, trying to explain to him what I felt were the inadequacies of his letter.

MR. SCHAFFER: No objection.

(Petitioners' Exhibit 15 was received in evidence.)

xx Q Mr. Gardner, would you please describe how many pay telephones are located in the dormitory unit 11 South?

A Pay telephones, coin operated?

Q Coin operated telephones.

A There are four.

Q And are those phones limited to the 212 Area Code?

A Those phones are limited to the 10-cent calls in the 212 Area Code. You cannot get the operator to make any other kind of call.

Q How many of those phones are currently operational?

A Two.

Q Would you describe what is wrong with the other two, if you know?

A Well, they are not functioning. Technically I couldn't tell you; I'm not a telephone repairman. As of this morning, when I left for court, there were two phones functioning out of the four. The other two simply weren't functioning.

Q All right. How many long distance phones are located in the dormitory unit?

A Four.

Q And how many of those are currently functional?

A Three.

Q Could you tell me physically where the pay telephones are located?

A The pay telephones are on a wall in the day area. They are in two clusters. Two of them are about five feet apart from each other and then the other two are on the other side of the wall, about four or five feet from each other, five or six feet from each other, perhaps. They are just hanging on a wall in the open day room.

Q Are they inside a phone booth?

A No, sir. They are not enclosed in any way.

They are merely hanging on a wall.

Q Would you describe where the long distance phones are located physically in the dormitory area?

A On another wall, which is at a right angle from the wall which has the pay phones. There are four black dialless long distance phones. They are all next to each other, maybe two feet apart. They are all on the same wall, all next to each other, all lined up next to each other.

Q Are any of those phones enclosed?

A No, they are not.

Q Have you had an opportunity to use the long distance telephone system?

A Yes, sir, I have.

Q Could you describe that experience? Well, let me withdraw that.

Approximately how often have you used the long distance telephone system?

A Oh, maybe twice a week, sir.

Q And could you describe your most recent experience with that system?

A Last week, last Thursday I think it was, I had occasion to place a call to New Jersey, and what is required is waking up for breakfast and staying out of bed, because after we are released from breakfast at 7.30 in the morning, a quarter to eight, whatever hour it is that particular day, two blank lists are posted on the bulletin board, each list containing 21 names. So there are a total of 42 slots and there are 120 inmates.

So to get on the list one would have to stay up and be up at 7.30 in the morning and run out when the door is opened and put his name on the list.

The phones at that time were functional from one in the afternoon until nine at night. They are now operating from three until eleven. There was a change, I believe last week, just the beginning of this week or late last week.

The problem with that on 11 South is that we are locked in the dormitory from four to about six-thirty. So the only daylight or business hour that we have to make a phone call to call an attorney as such is from three to four in the afternoon, because by the time we are let out after dinner you can only make social calls or catch people who are working late.

The experience relative to using the phone is also a strange one. It takes, on the average, anywhere from 15 minutes to 45 minutes to -- it has taken me on the average of anywhere from 15 minutes to 45 minutes, an hour to have the operator pick up and acknowledge that you are there. Once she does that, you have no trouble placing the call. You give her the number and she simply places the call collect.

But there are ten-minute time slots on the phone list, which is 21 names. The list itself is rendered absolutely useless. It takes well in excess of ten minutes just to connect with the operator. As I say, a half hour, 40 minutes is not unusual. So the ten-minute time slots are really rendered ridiculous.

Q All right. You testified that it took you anywheres from 15 minutes to 45 minutes to place a call. Have you observed were other inmates waiting at the phone for long periods of time, or can you testify from your personal knowledge?

A I can testify from my personal experience as well as from my observations.

MR. SCHAFFER: Objection, your Honor. He cannot testify as to his personal experience as to when their names were on the list.

MR. YOUNG: I didn't ask that. I asked whether he had observed people waiting on the phone for periods of time.

THE WITNESS: My experience is no different than anyone else's.

Q You have observed other people waiting?

A Similar periods of time, yes, sir.

Q Are you required to sign up for collect calls as well as prepaid calls?

A Yes, sir, absolutely.

Q And how many times can you put your name on a list per day?

A One per day.

Q In other words, it is your tesrimony that you can only make a maximum of one long distance call a day?

A If you get your name on the list, you can make the one long distance call per day. If you miss getting your name on the list, you can make none.

Q All right. Turning to the local telephone system, could you describe your experiences in using that system?

A Well, there you are not limited as to the number of phones you can use. But we've had several other problems with that.

Until last week nickels were unablle and you are not allowed to bring them in from the visiting room. So we only have dimes, which presents a problem if you want to stay on more than three minutes. You have to use another dime, in effect, as opposed to using a nickel, which does present a hardship when you are limited to $4 and change per week.

There is constantly phones out of order. As I previously stated, there are two not functioning today. With 120 people, two pay phones to the local area will present a problem, and especially in the evening hours.

The noise levels are a constant problem because the phones are never functioning well and there is always trouble hearing because there is a television set and a pool table in the direct proximity of the telephones and that definitely conflicts with your ability to hear.

And as far as getting on line to use the phones, there is no established procedure. One just gets on the end or asks who is last, so to speak. But I would say there have been more fights and more problems caused over the telephones than over any other single thing at the MCC. There are constant fights, constant problems. Someone will get on and not have regard for anyone else and want to stay on for 45 minutes to an hour, and there is going to be a fight. It is the major source of that sort of problem at the MCC.

Q Referring to fights, can you describe any specific instances where you have observed a fight or observed any sort of altercation as a result of the phones?

A There have been so many. We had one just last week with two Hispanics where one was on the phone. I couldn't understand the language, unfortunately, but a pool ball got thrown at the fellow who was on the phone's head and missed it by inches. It could have been deadly.

The hunger strike that goes back to last year involved other things, certainly, but started over a fight involving the telephone.

Q What hunger strike are you referring to, Mr. Gardner?

A Well, the hunger strike goes back to April, May, I guess, of last year, and, as I say, there was a fight between -- racial tension was very high at that point on 11 South, and I think it is today, and there was a fight between a black boy and a young Italian fellow, and both of them were locked up, and that precipitated resentment between the two groups.

Somehow leadership evolved and people started complaining about the telephone and several other incidents, and the leadership that evolved decreed that no one should eat until we get certain matters resolved, certain reforms instituted at MCC, and the entire floor went along with that for a period of three or four days.

But that started, again, with a fight over the telephone. I agree that there was more to it than just that. But the gight over the phone precipitated the entire incident.

Q All right. Mr.Gardner, during the times that you have been in the commons area of the dormitory unit, have you overheard any parts of a telephone conversation between an inmate and the person on the other end of the line? In other words, have you heard his voice?

A Yes. All the time. On a long-distance phone, you are standing, holding on to a phone, not talking to anyone for a half hour or so waiting for the operator to pick up. If someone on the other phones is engaged in a conversation, you couldn't help but hear, because you are standing right next to each other in an open area.

On the pay phones, generally people lean on the wall opposite the phone waiting their turn to

They had a list prepared and they went into the dormitories asking certain inmates to step outside. They told us that these people had been chosen to represent us.

There was going to be a meeting, but it was obvious to us at that point that that was not the case, that these people were being taken elsewhere from what we had seen outside the lobby, these particular inmates and they actually did pick many of the inmate leaders and were taken outside and handcuffed behind their backs and put in an elevator and moved up off the floor, not to be seeen again, and with the leadership broken up, the administration was able to break up the entire strike.

Q Mr. Gardner, would you please describe the physical exercise equipment that is available in the dormitory unit?

A There is a three-station -- aminiature universal gym in the television room which doesn't work. It doesn't have the pins to choose the degrees of weights that one would want to use, so it only goes for the minimum or the maximum.

There is, upstairs on the balcony, there was once a functioning bicycle-type machine and a jogging machine. both of which have been pretty well destroyed.

They just weren't heavy enough duty for this type of use when they first came.

There is a black bar hanging in the television room. I am not sure whether it is a chinning bar or a black bar hanging in the television room. I can think of no other physical -- physical exercise you said?

A I think we stipulated that that is called a dip bar.

THE COURT: A what?

MR. YOUNG: A dip bar.

THE COURT: D-i-p?

MR. YOUNG: Yes, for a particular type of exercise.

Q Is there a sign posted in your unit concerning the gym hours?

A There is a big sign posted in the day room that says "Gym hours, 7.30 a.m., 7.30 p.m."

Q To the best of your knowledge, is there any gym in your unit or anywhere else in the MCC, an indoor gym?

A No, sir, there is not, but there are constantly people taking pictures of that sign and I wonder.

Q Have you ever been employed at MCC?

the middle of September, 1976.

MR. YOUNG: Can I offer this into evidence at this time?

THE COURT: Does that take care of your objection, Mr. Schaffer?

MR. SCHAFFER: Yes.

(Petitioners' Exhibit 16 was received in evidence.)

xx Q Mr. Gardner, other than the times when you were acting as the law librarian, did you ever attempt to use the services of the law library at the MCC?

A Yes, sir.

Q Would you describe the procedure for using that?

A You take a form and if there are none available you take a blank piece of paper and you write down the books that you are requesting, and up until about a week ago you had to catch the fellow that delivers the books or someone from the education department when he is selling newspapers in the morning or making deliveries of books and give him the request, and he would bring it downstairs and you would wait for books to be brought up to you.

About two weeks ago a brown envelope was put on the bulletin board which said, "Request, law library pick-ups," or words to that effect, where the finished slips are supposed to be placed.

Q Did you testify as to how many books you are allowed to request at one time?

A No. You are allowed to request up to three books at one time and you are allowed to keep those books for a maximum of three days.

Q And could you tell us about your most recent request for law books?

A Most recent request was about 10 days ago, I guess. I requested a soft-covered -- well, firstly, I put the request in the brown envelope which had just been put up on the bulletin board, thinking that I didn't have to stand around catching someone to bring it down, and that would be an improvement. That would be on Monday of last week. On Thursday of last week I checked and saw that my request was still in the little brown envelope, so I took it out and used the old system of finding someone to bring it down. I requested soft-covered Title 28 and two annotated books from the United States Code. I received soft-covered Title 28 but not the two other books and I have never received an explanation.

Q Mr. Gardner, have you ever complained concerning the contents of the law library?

A The request prior to this request justified the complaint and I did complain. I wanted to do some parole work relative to Susan's parole denial and I was trying to get several editions of the Modern Federal Practice Digest and I put in three or four requests and I was getting a little anxious, not having heard anything, so I wrote a memorandum with those requests to the warden, asking him to please see why the books are not being sent up to the floor.

Q I refer you to Petitioners' Exhibit 17 for identification, and is this a copy of the memorandum you just referred to?

A No.

Q Is this one?

A That's a copy of the memorandum.

MR. SCHAFFER: No objection.

(Petitioners' Exhibit 17 was received in evidence.)

xx Q Did you on any other occasion complain as to the contents or condition of the books in the law library?

A Well, relative to this same incident, after all of that, I finally received the books but the Modern Federal Practice Digest -- I think it's the 1960 edition. It might be later but it's definitely in the '60s. And it didn't have the supplements or pocket parts any place to be found, so I again wrote to the law library and asked them to please send up the supplements or pocket parts or what have you because they were there, and with the Modern Federal Practice, it's 15 years old and so it's worthless and useless.

Q I refer you to Petitioners' Exhibit 18 for identification and ask you whether this is the memorandum that you submitted?

A That's the one.

MR. SCHAFFER: No objection.

(Petitioners' Exhibit 18 was received in evidence.)

xx Q When you were law librarian, did you have occasion to observe whether the pocket supplements of the law books needing pocket supplements were in fact placed in them?

A Well, we received them regularly, and I tried to put them in as regularly as I had time to do it. We did receive them. I wouldn't say I checked the weekly parts every week, but I did as well as I could to keep them up-to-date.

Q And the books that you have received since in the law library, have the pocket parts always been up-to-date?

A Generally, there are no pocket parts in any of the books I received for the last three or four months.

Q When you were law librarian, did you recceive any requests for books that were not contained in the law library?

A Oh, yes, many.

Q Could you describe the nature of those books?

A We got several requests a week for state books because we have lots of people here doing state sentences and such and have state problems as well as the federal, I guess, but we constantly got requests for state books and we have no state library at all, or at least we didn't then. To the best of my knowledge, we still don't.

At that point we didn't have a complete Federal Supplement or the Federal Reporter. They stopped I think with 440 with the Federal Reporter and 230 with the Federal Supplement, so the case law only went back so far and didn't go further.

We always get requests for certain books on prison litigation and books on federal forms and things of that nature that we just didn't have.

Basically, that's it. All case law and state law is basically what we were missing.

We also ran into problems whenever there was a popu[illegible]r case because we weren't allowed to Xerox the cas[illegible]n certain cases I was always in favor of making a Xerox out of them and sending a Xerox to the inmate who requests a case so you don't have to send them the whole hard-cover book because they tend to get ripped out of the hard-cover book and if there is one or two cases pertaining to parole law or prison litigation or some such thing it presents a problem. So we don't have Xerox available in the education department so we never were able to do that and we had to send the book, which presented a problem. Sometimes the books were no good because the pages were missing and we still have that problem.

Q In connection with the law library, did you also have responsibility for the general law library?

A Yes, sir, I did.

Q Would you explain the nature of those responsibilities? Were they essentially the same as presented to you.

Q Referring to this document, could you tell me whether the Bible is listed on this document?

A No, it is not. I once looked for it but I'll check again.

No, it is not.

THE COURT: Well, if you are going to offer it --

MR. SCHAFFER: Your Honor, we have no objection except to note that this is a list of magazines and not of books.

(Petitioners' Exhibit 22 was received in evidence.)

Q Mr. Gardner, have you ever received mail from the courts or attorneys while you were at MCC?

A Yes, sir, on a regular basis.

Q Has that mail ever been opened out of your presence?

A Yes, sir, on a regular basis.

Q Could you describe any instance or instances when that has occurred? For example, could you identify the court or the attorney who had sent the letter?

A Ten days ago I received copies of Susan

Braunig's appellate briefs from the attorney who prepared her appeal with the regular mail, in the evening with the mail delivery.

I have on numerous occasions in the last couple of months received letters from attorneys, Stanley Fisher, Howard Jacobs, Don Nawi, basically from attorneys other than yourself, because they have a return address that says attorney at law but they don't stamp the envelopes as you do, Mr. Young, to make it perfectly clear that the documents enclosed are privileged, and very often if it is just a return address, most frequently it is missed and comes up in the evening mail.

Q Just to make it clear, the, the envelopes that have been opened out of your presence did have attorney at law on the outside or not?

A No. They are printed stationery-type envelopes which specify "Attorney at law" or "Counselor at law" or however they have their stationery printed.

Q It is your testimony that these envelopes have been opened out of your presence?

A Yes, sir.

Q Mr. Gardner, have you encountered any delays in receipt or delivery of mail at the MCC?

A Absolutely.

Q Has your room ever been searched?

A Yes, sir.

Q Have you always been permitted to observe that search?

A No. I've never been permitted to observe that search.

Q Have you had any materials confiscated during such searches?

A Yes, sir, I have.

Q Can you identify what those items were?

A Minor things. I had some vitamins I managed to get from sick bay that I had put into a different envelope, into a white envelope. And such contraband as Tylenol and aspirin and extra clothing, and just things that you accumulate over a period of time. Nothing serious was ever seized from me.

Q All right.

A Never anything worthy of an incident report or anything of that nature.

Q Mr. Gardner, are you permitted to receive food packages or other personal effects at the Metropolitan Correctional Center?

A Once a year. One package a year during the holidays, sir.

Q All right. Are you permitted to receive personal effects, or is that limited to food?

A Are you talking about that package once a year?

Q Yes.

A It is limited to food. It is hermetically sealed. There is a note put on the bulletin board that says Johnson has discretion over what can come in and what can't come in. But it is limited to food and certain types of packages.

THE COURT: Can you get chopped liver at that time?

THE WITNESS: Fortunately my mother didn't send me the package. No, your Honor.

THE COURT: I know you don't want it.

THE WITNESS: I think not, unless I can find it hermetically sealed from a chopped liver factory.

Q Are you permitted to possess your own typewriter at the Metropolitan Correctional Center?

A No, sir, you are not.

Q Do you know of anyone who has ever possessed a typewriter at the Metropolitan Correctional Center pursuant, say, to a court order?

A Yes, sir. There was a gentleman on 11 North who pursuant to court order managed to have his own typewriter. But that was the only instance where I've ever seen that feat accomplished.

MR. SCHAFFER: Objection, your Honor I move to have that stricken from the record. That would be on hearsay. Mr. Gardner would have no knowledge as to a court order.

THE COURT: As to what?

MR. SCHAFFER: As to the court order being issued with respect to some other inmate. This could only be learned from what the other inmate told him.

THE COURT: It sounds right, Mr. Young.

Q Did you happen to see any document or anything that would confirm it?

THE COURT: No. You'll have to get the court order. Don't pursue it. The objection is sustained.

Q By the way, what was that inmate's name?

Could I inquire as to that?

THE COURT: Sure.

A I would have to give it to you later. I'm not certain who it was.

Q Okay.

A There was one on 11 North very recently.

MR. YOUNG: Is the U. S. attorney willing to stipulate that people are permitted to have typewriters at MCC pursuant to to court orders or not?

MR: CORSI: I believe that is in the stipulation.

MR. YOUNG: All right. Fine.

Q Mr. Gardner, have you had occasion to purchase items from the commissary at the Metropolitan Correctional Center?

A Yes, sir.

Q And would you describe the procedure by which you purchase such items?

A On the 11th floor, on Thursday night, we get a commissary list. We put our name and other vital data on it and circle and mark the items that we desire to buy, hand the list in to the correction officer, and the next day, on Friday, after the 4:30 count, early evening some time, we get our commissary in a brown paper bag, we sign it, receipt for it, and it is ours.

Q And do you generally receive everything that you circle on that list?

A I rarely receive everything that I circle on that list.

Q Could you explain the nature of the items that you don't receive?

THE COURT: Could I ask what this is getting at?

MR. YOUNG: Well, when we in our interrogatories asked for what the commissary made available, we were provided with a list, and I don't want either the petitioners or the court to be misled into thinking that that list in fact contains items that are available to the inmates, because many of them are not available.

THE COURT: Generally? I mean he is going to give some incidents where he didn't get --

THE WITNESS: No.

MR. YOUNG: -- he said he never received. Or I believe his testimony is he virtually never received certain items.

THE COURT: If it is shown certain items are never received, what part of your petition does that go to?

MR. YOUNG: All right. Paragraph 113 of the amended petition states that the commissary at MCC, from which inmates must supply individual personal needs, is inadequate in supplies and operations to meet their needs.

It is going to be the testimony of, I believe, every inmate --

THE COURT: What relief are you seeking? An order that it should be adequate?

MR. YOUNG: Well, an order that a certain variety of items should be provided through the commissary.

THE COURT: Namely?

MR. YOUNG: Well, for example, the items that were requested and weren't received by Mr. Gardner. It is a common complaint at the Metropolitan Correctional Center that even basic items are physically not available through the commissary.

THE COURT: I guess I'll have to hear it. This is not something you were able to stpulate?

MR. YOUNG: As to items not available, no, we weren't. I don't think the U. S. attorney is willing to at this time.

THE COURT: All right. I'll hear it.

Q Would you identify the items that are not available.

A It has been about three months since the Timex watches, which were on the list, were available, your Honor. Until last week it was a good many months that nickels were not available for phone calls. Jump suits or articles of clothing are never available in sizes as listed. The food items are always -- you never know which food items you are going to get. But peanut butter, being the only noncookie or candy food item, has not been available since the first week it was on the list, which is about three months ago. It was available for the first week and then disappeared.

And there is a basic constant shortage of other items that you just don't know what you are going to get and what you are not going to get.

I'm a pipe smoker and I'll go weeks without pipe tobacco. That is contraband if you bring it in from the outside. It is not contraband if you buy it from the commissary. But there is a constant turnover in the other items. You never know what you are going to get and what you are not going to get. They do not substitute one item for another.

They do not substitute like items when the brand that you select is not available. So you have no way of knowing that you are not getting anything.

Q Just one of the items you referred to are the Timex watches. Are you permitted to have your own watch at the Metropolitan Correctional Center?

A You are permitted to have only the Timex watches, which are sold at the commissary, but the commissary hasn't had them in many months.

Q Maybe I should clarify that question. Are you permitted to bring a watch in from the outside when you come into the Metropolitan Correctional Center, say if you had your own before you were incarcerated?

A No, sir.

Q Mr. Gardner, I believe it is going to be the stipulation of the parties here that you are permitted to spend up to $15 a week or a maximum of $50 a month at commissary.

Is that it?

MR. CORSI: That's correct.

A That's correct.

Q Do you usually spend that amount of money?

A When I have it available, I certainly spend it. You have to realize you spend $4 a week for change generally for the telephones. So that's $16 a month or $20, if there are five Fridays in a month.

Those who smoke have that additional expense. If you buy your cigarettes or tobacco and your $4 in change and a jar of coffee and cream, you have spent your $15.

Q Mr. Gardner, have you ever observed any rodents at the Metropolitan Correctional Center?

A Yes, sir.

Q How many?

A Up to the point of my deposition I testified that I observed two mouse-type animals that were killed in the dormitories. Since then we have had incidents on the unit where we have observed other sorts of insects in the food, specifically in the salad.

THE COURT: Let's stick to rodents.

Q Have you bserved other rodents other than the two that you referred to?

A No, sir.

Q Have you observed insects?

A Yes, sir.

Q Could you describe what insects and where you observed them?

A Termites in the food, on one occasion on a man's tray, but generally in the salad, and becoming much more predominant recently.

Q Mr. Gardner, you testified that there is

A Yes, sir, there is.

Q Is there always a supply of paper towels in that dispenser?

A I've never seen a supply of paper towels in the dispenser.

Q Have you ever seen any paper towels in the dispenser?

A No, sir, never.

Q Is toilet paper always available?

A Toilet paper is usually available. It has been very rate that we have run out of toilet paper. We have, but only on rare occasions.

Q How about other individual personal supplies, such as soap, toothpaste?

A Again, they are obtained from the correction officer, depending upon his supply. Sometimes they are there and sometimes they are not. It depends on how you catch it.

Q Do you have a washing machine and a dryer on your floor?

A We have one washing machine and one dryer for 11 South, on our unit.

Q And that serves all of the people housed in the dormitory unit?

T5 pm

Q Could you describe the uniforms you have?

A The one-piece jump suits with a zipper that starts in the front and goes all the way to the top. I'll be happy to bring one to court. I don't know how else to describe it. They are long sleeve, a spaceman-type costume, and I don't know how to describe them.

Q Are you required to wear those uniforms at all times when you are inside the residential unit at Metropolitan Correctional Center?

A Yes, sir, at all times. We are required to wear that uniform at all times.

Q Are you required to wear it when you are visiting with your family?

A Yes, sir.

Q Could you tell me what positive or negative effect those uniforms have on you?

A Those uniforms are an embarrassment when you are visiting with your family, especially the ones we have gotten in the last six months, the bright red ones with the long sleeves.

They are like a Santa Claus suit. They are not something you would wear by choice when you are seeing your family or people from the outside.

Q What foot wear are you provided in that

Correctional Center?

A This trip I was provided with no footwear. The first time I came in, they had some red, white and blue-type sneakers. Generally, I wear the shower shoes that you purchase at the commissaries for $1.80.

More recently, I purchased a pair of sneakers for $18.

The vast majority of the people, including myself, have worn about -- I am wearing my own shoes from home, your Honor. I'll be happy to bring them tomorrow.

They are what I have worn, the shower shoes are what I have worn about 90 percent of the time there and the population wears. They are the most comfortable thing to wear, they are really rubber slippers, for lack of a better definition.

Q Describe the tennis shoes. Are you given new tennis shoes when you receive them?

A I have never been given new tennis shoes and I have never seen new tennis shoes there.

Q Are you provided with underwear by the MCC?

A Yes, sir. When you come in, you are given a set of underwear.

Q Is this new underwear?

A No, sir, not generally.

Q Are you permitted to have your own clothing inside the residential units at the Metropolitan Correctional Center?

A You are not permitted any clothing of your own. This clothing is left downstairs and we change on the way to court.

Q Does that include such items as footwear and underwear?

A Yes, sir. None of this allowed onto the unit although recently, some people have been allowed to wear their own shoes up to the unit because they had absolutely nothing to wear otherwise. They have nothing to put on your feet when you check in.

THE COURT: Mr. Young, I don't know close to concluding with Mr. Gardner you are. Tell me how close to concluding are you?

MR. YOUNG: I probably have between a half half and an hour of direct left.

THE COURT: Well, then, you better draw to a close for today and we will adjourn until tomorrow afternoon.

MR. YOUNG: What time, your Honor.

THE COURT: First, let's get through, or is ductory question and get him to give you some conversation about it. Put in the memorandum.

MR. YOUNG: All right. Fine.

Q Referring to Petitioners' Exhibit 41 for identification, is this the memorandum to which you just referred?

A Yes, sir. That is posted in the dormitories and on the bulletin board.

MR. YOUNG: Your Honor, I will offer this at this time into evidence.

MR. SCHAFFER: No objection.

(Petitioners' Exhibit 41 is received in evidence.)

xx Q Mr. Gardner, would you describe the ventilation system in the dormitory rooms?

A We have ventilators, or vents, on the walls in, I believe, three locations in each dormitory, on the walls. And there is a baseboard type, black baseboard, a heating sort of unit that runs around the perimeter of each of the dormitories.

Q And have you had occasion to feel the air coming out of those vents?

A Yes.

Q How would you describe that air?

MR. SCHAFFER: Objection. The time frame, your Honor.

MR. YOUNG: All right.

Q The most recent time you had occasion to feel the air.

A Over the last month we have basically had cool air coming out of the ventilators. The wall ventilators generally have blown cold air throughout the winter months. It is very sporadic. It goes from too cold to too hot. But generally we have had cold air throughout the winter, for some reason.

Q Have you, yourself, or have you observed other inmates attempting to block the air coming out of those vents?

A Those vents are constantly, of necessity, blocked with various cardboard arrangements and such to stop the air conditioning in the middle of the winter.

Q And have you on occasion been ordered to remove or observed MCC staff removing those blocks?

A Yes. I've both been ordered to remove the covers from the ventilators and I've observed staff removing them during morning inspection.

Q And who ordered you to remove them?

A Correction officers on duty, counsellors, Mr. Rivera, the unit manager, whoever makes the tours. In addition, there was a memorandum posted under the warden's signature which said the ventilators are never to be covered.

Q Mr. Gardner, turning to the issue of disciplinary proceedings --

A May I correct a statement I made yesterday?

Q Yes.

A I said one additional incident report, which was very recent, for supposedly refusing to work, and that shot was expunged from my record about a week ago by actionof the Unit Disciplinary Committee.

I neglected to mnetion that shot when you asked me how many I had received yesterday. I just want to correct my prior testimony.

Q Turning your attention now to Petitioners' Exhibit 32 in evidence, I believe you identified that yesterday. Would you tell us again what it is?

A This is a photostat of an actual incident report as it is handed to an inmate and accompanying documents relative to that shot.

Q Could you tell us the nature of the events relating to this incident report and how it was disposed

Q Go on.

A I was brought down later the same day to the lieutenant's office to be served with a copy of the shot. The shot read "Unauthorized use of the telephone." The lieutenant had me removed from the fifth floor and locked up in administrative detention -- well, in detention on the 9 South Unit.

I had asked the floor officer who was present during this entire thing, this entire scene, to come down to the lieutenant's office with me to explain what had happened and what had provoked my phone call, and she was very belligerent and said, "Absolutely not," she wrote the shot and I should have known better than to try to interfere and to try to use the telephone.

So the lieutenant locked me up. I was locked up for three or four days, I guess, over a weekend.

In 24-hour lock-up I was allowed out approximately half an hour per day. I was locked up in a 9 South detention cell.

The unit team, members of the unit staff, came to see me early the following week and informed me that the shot was being referred to the Institutional Disciplinblage of Jewish people on the respective units, nor was there any way we could have assembled. We weren't provided with any Seders or prayer books that we had asked for or any other lights or anything else that would have been necessary to a Chanukah service. Plus the fact I really don't think there was anyone on the eleventh floor, although there were many Jews, that were capable of conducting a service, actually.

Q Are there any other items listed in that document which in fact did not take place?

A Yes. It says that the rabbi will provide us with Chanukah cards. I received no Chanukah cards and to the best of my knowledge no one did. It also said that the appropriate candles -- this is going further down the document -- will be supplied on that date. I saw no such candles.

On the next paragraph, where it talks about special services being held on the seventh floor visiting room, we did assemble in the seventh floor visiting room. The internal security brought the Jewish inmates who had signed up and paid for or requested to go to this event on that seventh floor visiting room at the prescribed time. There was a meal served which we had paid for but there was no service held.

Q Did the rabbi attend?

A The rabbi was there. He never took his coat off. He was there for maybe 10 to 15 minutes.

Q Did he conduct the service?

A He spoke to us a little while, for maybe 10 or 15 minutes, as I said. We aired certain grievances. I know I spoke and explained to him that I haven't seen him in the last six or seven months and I've been looking for him, and he promised to come more frequently.

He talked for a couple of minutes about Chanukah, that it wasn't a particularly significant holiday in his opinion, it got more attention than it deserved because it came at Christmastime. I remember his speaking for a few minutes. But there was no service or anything that resembled a service.

We sat down and ate the meals that were provided and went back to our respective units.

Q And has the rabbi been present?

A One other thing occurred there. He gave us a phone number where we could reach him, which is an answering service.

MR. SCHAFFER: No objection.

(Petitioner's Exhibit 43 was received in evidence.)

xx

Q And has the rabbi been present to preside over services on other religious holidays?

A Since Chanukah I've never seen the rabbi.

Q Have you attended any other high holiday or religious services since Chanukah? Or have there been any?

A There have been none that I can recall since then. This was December, Christmastime, Chanukah. January, February, there have been none since then that I could recall. There have been none since then, period, to my knowledge. And I haven't seen the rabbi since that day.

Q Mr. Gardner, prior to your incarceration, did you attend high holy day services?

A Yes, sir, I did.

Q And are you a member of a temple?

A Yes, sir.

Q Were you prior to your incarceration?

A Yes, sir, I was. And I still am.

Q What is the name of that temple?

A Temple Emanu-El. I have been continued without dues and I'm still a member of the temple, as is my family.

Q Mr. Gardner, could you describe your experiences will have to go back to Rosh Hashannah. Chanukah was not a service; it was merely an occasion to eat together.

Q But on a weekly basis you are not permitted to form a minion?

A On a weekly basis we are not permitted or given the facility other than being required to assemble in any way, shape, manner or form.

THE COURT: Will you explain for the benefit of those who are not Jewish what a minion is?

Q Mr. Gardner, can you define what a minion is?

A A group of ten adult Jewish males -- ten or larger -- ten or more.

Q Mr. Gardner, could you describe your experiences when you had been brought back and forth to the court?

A Yes, sir. Generally we are awakened by a Correction officer on duty at six o'clock in the morning and brought down to a holding area on the third floor, which is commonly referred to as a bullpen, your Honor, prior to breakfast, which is generally around 7.30 -- breakfast is generally served around 7.15 or 7.30 or 7.45.

We are fed breakfast in the holding area some time between 7.30, and 9 o'clock we are permitted were made as to the truthfulness of this witness.

THE COURT: If you want me to take judicial notice of this, I will, but please cross-examine the witness about the subject of his direct, so that we can get on with our discussion of the MCC.

MR. SCHAFFER: Your Honor, I would just briefly ask your Honor to take judicial notice of page 31 of that transcript, in which Judge Pierce made the following --

MR. YOUNG: Your Honor, I will object to this. He is doing what you just asked him not to do.

THE COURT: Yes, I will not do it.

Now please listen to me, when I tell you -- please put that away and go on with your examination.

MR. SCHAFFER: Your Honor, am I not entitled to question this witness' credibility on the previous convictions and sentencing?

THE COURT: You are entitled within limits. I think he has not been a good man.

Now will you go on with your cross-examination, please.

In the exercise of discretion, I want you to go on to something else.

MR. SCHAFFER: All right, your Honor. I just wish to note an objection, because obviously all

I considered an unjust legal obligation. It was a matter of a couple of hundred dollars but my object in this was not to have to pay him."

A Other than the first one, because later on when they read the statement from the deposition, I admitted having made false statements in the deposition -- not at the trial.

Q Mr. Gardner, I would like to go over with you the exact dates, to the best of your recollection, that you arrived at the MCC on the occasions when you were incarcerated there.

I believe you stated on direct examination that the first time you were incarcerated at the MCC was September 1975; is that correct?

A Is it correct that I stated on direct examination -- is that the question?

Q The question is, to the best of your recollection is that the first time that you were at the MCC?

A September 1975? I would say that is probably correct, yes, sir.

Q And on that occasion you were housed in the 9 South unit?

A The first time I was here I was housed overnight in the 9 South unit, yes.

A It is out of context. I was talking about the last time I was in 5 North, which terminated a few months ago.

You are now talking about the first time I was in 5 North, which was when I was on trial before Judge Pollack in this court.

Q In the course of that deposition you neither mentioned that you had been on 5 North during 1975, nor did you mention that you had ever been in the balcony area, is that correct?

A I don't know whether I did or not.

Q Well you were asked what your housing accommodations were during the Fall of 1975, and you were also asked what your housing accommodations were when you came back in the late Fall, and on neither of those occasions did you indicate that you had ever been accommodated on the balcony of 5 North, did you?

I show you the deposition transcript from January 26 (handing).

A This is the -- the deposition was the first time I went through this sequence of events or tried to recall the history of my movements in prison. I had no records --

Q Mr. Gardner, just answer the question, please.

Isn't it a fact, Mr. Gardner, that you had sought psychiatric help for depression as early as January, 1976, well before the time that you were housed in the dormitory unit?

A You are saying January of '76?

Q Yes. The end of January, '76 did you not see Dr. Goldstein for the first time, complaining of depression?

A I'm not certain what the first date was that I saw Dr. Goldstein. It was definitely on that trip.

Q And it was definitely prior to the time that you were in the dormitory, was it not?

MR. YOUNG: Your Honor, I object to this line of questioning on the basis that Mr. Gardner's communications with Dr. Goldstein are, I believe -- I assume that he believed they were under the privilege commonly accorded to psychiatrists and their patients.

I have no objection to Mr. Schaffer asking Mr. Gardner if he was depressed prior to moving into the dorms, but I believe it is improper to use Dr. Goldstein's records or for Mr. Schaffer to even have those records.

MR. SCHAFFER: Your Honor, there are two

evidence.)

1X

Q Mr. Gardner, at the time of your trial before Judge Pierce, you indicated that you were then housed in the dormitory unit, is that correct?

A That is correct.

Q At that time, during the time of the trial, did you indicate to anyone that you were depressed because of your being housed in the dormitory unit?

A I really think that I was asking the psychiatrist why I was depressed, not telling her why, at that time.

Q At any time during your trial before Judge Pierce, did you ask to be transferred from the dormitory unit?

A I don't recall ever so asking.

Q Mr. Gardner, have you ever lived in a dormitory unit in any other correctional facility besides the New York MCC?

A Yes, I have.

Q Where?

A The Federal Correctional Institute at Danbury. The FCI at Sandstone, Minnesota. For a very brief while, at the MCC in San Diego, California. That would be it.

the number of chairs they require for their particular visit and drag the chairs into the visiting room with them.

Q On direct examination you stated that socila visits were generally 45 minutes to an hour and I think a little later on you specified that you were really talking about Friday, Saturday and Sundays.

Have you ever had visits that short, 45 minutes on the weekend?

A Yes, sir.

Q Can you specify when that occurred?

A I would think last Saturday. No, I guess I must have had about an hour.

I don't have records of my visits but generally on weekend visits and I generally have a visit during the weekend because my wife generally brings the children or my mother or some family comes. The visits are generally on the average 45 minutes to an hour.

Q On the average, that means there would be some shorter than that, than 45 minutes?

A Yes, but not generally.

Q Can you recall any spec[illegible]stances when you had a visit that was as short as 30, [illegible] minutes?

A When you say specific instance --

Q You had written these out prior?

A Yes, sir. The balance of your question I would answer affirmatively.

Q In other words, while you were in the MCC you directed her to carry out those instructions?

A I would not say I directed anybody to do anything but she carried out those plans, or attempted to, while -- I don't remember whether I was at the MCC or not. One second now.

Yes.

Q You were in the MCC. Did Miss Braunig visit you in the MCC in the early part of 1976?

A Yes.

Q And did you discuss the check-kiting scheme with her before she left for Canada during those visits?

A Yes.

Q Mr. Gardner, since Miss Braunig has been brought back to the MCC from Alderson have you been permitted to have phone conversations with her?

A On a very limited basis.

Q Approximately how many phone conversations have you been permitted with her?

A I have been permitted with her -- I would

Q Are you aware of the fact, Mr. Gardner, that that check in scheduling was carried out by the warden pursuant to the request of Michael Young?

A No, I'm not.

Q I believe you stated on direct examination that on the average you make two long-distance calls per week. How many local calls do you make per week on the average, Mr. Gardner?

A Numerous. Do you want an approximation?

Q Yes.

A It varies from week to week, obviously. I would say I make two or three calls a day, actually; maybe on some occasions more.

Q Mr. Gardner, you testified on direct examination that you have submitted approximately 25 cop-outs while at the MCC. How many of those have been submitted since November of 1976?

A Probably half. Maybe a little more.

Q How many did you submit in February of '77?

A In February of '77?

Q Well, let's just take January and February of '77 together.

A Seven, eight, nine. I would have to go end some time and I want to do something else with the rest of our time. Okay?

Q Mr. Gardner, have you ever seen a pocket part since you ceased to be law librarian?

A Yes.

Q Have you ever received a book which had no pocket part?

A Frequently.

Q Could you specify what the book was and when that occurred?

A Various sections of the United States Code Annotated and these Modern Federal Practice digest volumes.

Q And when did that occur, with the U. S. Code Annotated?

A During this last stay, about three months, two and a half, three months ago.

Q And you've received volumes which had no pocket part at all?

A Yes, sir.

Q Have you also received volumes where the pocket part was out of date?

A Yes, sir.

Q And what volume was that?

use it, yes. I generally find other people to type for me.

Q There is a typwriter on the 11th floor, is there not?

A There is exactly that, a typewriter, yes, sir.

Q Isn't it a fact that you have used that typewriter on the average every couple of days?

A I would say, at least once a week.

Q You stated yes and then you said at least once a week.

A Every couple of days. It depends, you know, how much I need and how busy the typewriter is.

Q There have been occasions when you have used it every couple of days?

A Yes, sir.

Q You stated on direc examination, Mr. Gardner, that the cleaning materials for use by the inmates in cleaning the unit were unavilable, I believe you stated, more than half the time.

When you say unavailable, do you mean that the cleaning materials were not there in the bathroom or in the shower or do you mean that they were in the closet where they are stored?

A I think actually I was really referring to

WILLIAM HALL, called as a witness by petitioners, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. YOUNG:

Q Mr. Hall, you are presently confined at the Metropolitan Correctional Center, is that true?

A That is correct.

Q And what unit are you housed in?

A I'm housed in 11 South, Dorm No. M.

Q And were you recently assigned to work in the Kitchen sanitation crew?

A That's also correct.

Q Would you speak up so that the court can hear you?

Approximately how long ago did that take place?

A About three weeks ago.

Q Could you tell me how you were assigned to that or who assigned you or who requested that you work there?

A They were having a problem with sanitation in the kitchen quarters at that time.

MR. SCHAFFER: Objection.

THE COURT: Sustained.

Q Did somebody state to you that that was the reason why you were being assigned?

A Yes, somebody stated that to us.

Q Who was that individual?

A The man's name was Mr. Criner, who was the supervisor.

MR. SCHAFFER: Objection.

THE COURT: Mr. who?

THE WITNESS: Criner.

THE COURT: How do you spell that, do you know?

THE WITNESS: C-r-i-n-e-r, Criner.

THE COURT: Well, there is an objection. What is he? Who is he?

THE WITNESS: He was my immediate supervisor at the time. I think he's -- he's about an assistant supervisor.

THE COURT: One of the staff members?

THE WITNESS: Yes, a staff member.

THE COURT: I'll allow it.

Q So approximately three weeks ago you began working in the kitchen. What was the nature of your work?

A Well, I was assigned to sanitation.

Q And what did you do pursuant to that responsibility?

A Excuse me?

Q What types of jobs did you do?

A Well, we cleaned and policed the kitchen quarters, the storerooms and the storage places where they kept the food.

Q And when you began this work was there food or any sort of material or dirt on any of the areas in the kitchen?

MR. SCHAFFER: Objection. Leading.

THE COURT: Yes. I think you should not lead, Mr. Young, on questions like this.

MR. YOUNG: All right.

Q Would you describe what the conditions of the kitchen were when you began working?

A Well, there was the excess build-up of grease, you know. There was a lot, I would say a medium amount of dirt. You know, the corners had not been done, I mean the corners where the carts were and the dishwashing machine and so forth had not been done in quite a while.

It was explained to me our job would be to straighten these matters out and that it was a problem at the time, and if we cooperated, you know, it would be appreciated, you know.

We decided to take this job because there was a couple of others open at the time, because, you know, like we live over there and we got to eat and everything and it was up to us to straighten it out.

Q All right. And have you at least in part straightened that out?

A Yes.

Q Or have you cleaned up some of the dirt that you described?

A Well, we worked two shifts for about four days, and we came a long way as far as cleaning it up is concerned, you know. We took it upon ourselves, you know, not to have things pointed out to us but to hunt for what needed to be done, and we really got down and worked.

(Continued on next page.)

Q Did you do any work inside the freezer or refrigerator departments?

A Oh, yes. We cleaned all three freezers that they have, walk-in freezers, that is.

Q What was their condition when you originally began this work?

A Well, it was a little chaotic, chaos. Boxes were strewn everywhere. Food was in there uncovered, which we wanted to know:hy. You know, they just rolled in carts with leftovers on them. Nobody bothered to put any wax paper or anything over them, you know. And it needed straightening out.

Q During your work over the past few weeks, have you had occasion to observe any food that had gone bad?

MR. SCHAFFER: Objection.

MR. YOUNG: Your Honor, I think even a layman is qualified to determine from observation whether food has gone bad.

THE COURT: Well, is that the gound of the objection?

MR. SCHAFFER: No, your Honor. The question is leading.

THE COURT: Yes. I don't know why you lead, Q Is it a Government alias?

A Yes, it is.

Q What unit are you presently housed in at the Metropolitan Correction Center?

A I am presently housed in what they call Special Unit No. 3.

Q Is that for persons in protective custody?

A Yes, Government witnesses.

Q More specifically are you under the witness protection plan?

A Yes, I am in the witness protection program.

Q And that is not applicable to all the people in Unit 3?

A No.

Q What date did you arrive at MCC?

A Well, I arrived at MCC on October 4, 1975.

Q And have you been housed in Unit 3 since that date?

A Yes, sir.

Q By the way, Mr. Parker, about what time did we start the interview last night?

A I think it was 11.35.

Q What was going on outside the counsel visiting rooms at that time?

THE COURT: Do you plan to go into it in cross?

MR. SCHAFFER: I hadn't planned to go into it.

THE COURT: Then I will exclude it.

Q When you first arrived at the Metropolitan Correctional Center where were you housed?

A When I first arrived at the MCC I was housed in the corridor.

Q In the third floor unit?

A Yes, in the third floor unit in the corridor.

Q Which of the corridors was that?

A C wing corridor.

Q What accommodations did you have in that area?

A Well, it was just a folding cot which was placed at the end of the wing and all my personal belongings were just thrown -- I had to place them under the cot and overhead there were four large bulbs and they burned all night which prevented me from getting any proper rest.

Q How long were you housed under that condition?

A I was housed under that condition for four days.

Q Were you engaged in any proceedings at that time?

A Yes, I was. I had come back under a motion for a reconsideration of sentence and I was expected to appear in court in New Jersey on the 8th of October, I believe was the date, the 8th of October.

Q Did the housing that you were kept in at MCC during those days have any effect on those proceedings or on your condition?

A Well, there came a point in time when I became rundown because I wasn't getting enough sleep and the unit was so noisy by the time I would want to go to sleep, say, 11 o"clock to be fresh so I could go over to consult with my attorney, between the noise that was on the floor and the television set and these lights shining in my eyes it was just impossible to sleep and after about three days of that I wasn't up to par when I did enter tne court for the proceedings. I was not mentally up to par.

Q Mr. Parker, were you subsequently moved to one of the rooms in Unit 3?

A Yes, I was.

Q Was that a single room or a double room?

A In the beginning it was a single room.

Q Did it eventually become a double room?

A Yes, it did.

Q Has it subsequent to the January 5 decision become a single room again?

A Yes, it has.

Q Has the bunk bed been removed?

A Yes, it has been removed and replaced with a single bed.

Q Is that similar to the single beds that were in the room before the bunk beds were put in?

A The original ones, yes.

Q Is it operational in every sense?

A Excuse me?

Q Is the bed functional in every sense?

A No, they still haven't managed to put the drawers in. In my particular room the drawers are just in the way. I can't put them into the bed because there are no rollers. The rollers haven't been attached to them. They are just taking up room inside the small area that I have to live.

Q Mr. Parker, on December 23, 1976, when this Court and these parties visited your room on a tour was there a shelf missing from that room?

A Yes, there was a shelf missing.

Q Has that shelf subsequently been replaced?

A No, it hasn't.

Q Mr. Parker, during the last month how many times have you left Unit 3 other than to confer with me in the room next to Unit 3?

A Well, I went to the hospital at one time and I was here in court another time and I was up on the roof one time, three times in the last month.

Q Have you left that unit for any other reason?

A No, sir.

Q Mr. Parker, are the individuals in Unit 3 locked into their room at jight?

A Yes, since January 27 they have been locked in their rooms from the hours of 11 o'clock until 6 or 6.30 in the morning.

Q And prior to that time?

A Prior to that time they were open 24 hours a day.

Q Mr. Parker, did you ever complain concerning the noise at late hours at MCC?

A Yes, I did.

Q What was the nature of your complaint?

A Well, I sent, at various times, what they call a cop-out to the Warden, the unit manager, to other members of the staff asking that they put some sort of a sign up as a constant reminder and declare the hours

3 are what they always ahve been since I have been there and that is from 4:30 in the afternoon until 7:15 -- excuse me; I believe it's supposed to be 7:30 in the evening, three hours.

Q Have you had any problems with visiting with family and friends at the MCC?

A Yes, I have.

Q Would you describe those problems for the Court?

A There are quite a bit of problems. I don't know where to start.

Q Just what are the first ones that come to mind ror you?

A Well, usually my family having to wait long periods of time to get up to see me, up to two hours some time.

MR. SCHAFFER: Objection.

MR. YOUNG: What is the basis for the objection?

MR. SCHAFFER: I think it is hearsay.

MR. YOUNG: Wait until I pursue it.

THE COURT: Pardon?

MR. YOUNG: He didn't allow me to pursue it to establish it wasn't hearsay.

THE COURT: How does he know that?

MR. YOUNG: That was going to be the next question.

THE COURT: Ask the next question.

Q Do you know this from personal knowledge?

A Yes.

Q Could you describe how you know it from personal knowledge?

A Well, my room faces the parking lot where my wife parks her car when she comes in and I see her. I wait by the window and I see when she comes into the parking lot and parks the car, and I imagine that she is inside the building within five minutes or less, and from that amount of time I can tell how long it takes for her to get upstairs, to be processed and to come upstairs into the visiting area.

Q On an average, how long does it take?

A On an average, it would be one hour, I would say.

Q Have you ever complained concerning the delays in visitors being processed and arriving at the visiting room?

A Yes, many times.

Q To whom have you complained?

elevator and there is a window, I would say, three feet high by seven or eight inches wide and you can more or less see who the people are who are waiting outside.

Q From this vantage point have you ever observed visitors waiting outside?

A Yes, sir.

Q Could you give us examples of periods of time that you have observed visitors waiting outside?

A It's been many times that the visitors will arrive and some men like myself, that are contemplating visits and are keeping our eye out, we will see the visitors knocking on the door. You can't hear them but you can see them banging on the door for some sort of recognition that they are out there, and we will notify the guard that there are visitors outdoor, stuck between the elevator and the security door and wanting to come inside, and when the guard gets good and ready and he finds time then he will go outside and let those visitors in.

Q Are you searched incident to a visit?

A You mean going into the visiting room?

Q Either. Take going in first and then coming out.

A Yes, going in we are given what is called a pat-down search.

Q How about coming out of the visiting room?

A Coming out we are stripped down naked.

Q That's all?

A We are stripped down naked and we have to display our private parts to the guard. They make us bend over and look up our anus.

Q Would you describe the effect of that search on the visit?

A It's not only degrading and humiliating but it seems to break up the whole tranquility of the visit that you just had, the nice head that you walk out of the visiting room with is like a crash.

Q Would you describe conditions inside the visiting room?

A Well, I don't know what you mean.

Q Describe the furniture in the visiting room.

A The furniture is mostly seats that we bring in from the unit proper itself, plastic seats, and they do have some chairs also in the visiting room itself.

Q Have you ever had to stand during a visit or sit on the floor during a visit?

A I have had to stand and I have had to sit on the floor, but that was only for a few minutes until the chairs came in.

Q Are there any food machines in the visiting room?

A No, just the one beverage machine that they put in two days ago.

Q Are you permitted to bring food into the visiting room, say, for your vistiors, to share with your visitors?

A No. I try to bring a bar of candy or save a piece of fruit from my meals and bring it in to my daughter and I was never allowed to do that.

Q Would you describe the temperature in the visiting room?

A The temperature in the visiting room now is normal and it's comfortable, but it hasn't always been like that.

Q Would you describe the occasions on which it hasn't been like that?

A Yes, there came an occasion after the Hon. Judge Frankel's visit where, around the holidays, the New Year's holidays, the visiting room itself got so hot that from the inside of the unit if you touched the glass windows you could feel the heat inside the room. We had to go through visiting like that on three consecutive days, and one of the fellows in there, Raymond Ellis, told me that there was a thermometer reading of 102 degrees inside that visiting room.

MR. SCHAFFER: Objection.

THE COURT: Sustained.

Q Did you have occasion to speak to a repairman who was repairing that thermometer?

A Yes, sir.

Q Did you observe the thermometer itself?

A Well, when the reiaprman came up to repair it I was looking through the window and I seen him take the thermometer out of the wall and like he left the room with the thermometer in his hand. It's not a thermometer, it's a thermostat. And he said, "Everything is okay, it's all fixed." It took like about three minutes.

Q For how long prior to that had the condition been as you described, I think you said that it was hot?

A Three consecutive visiting days. It was unbearably hot in there.

Q Is there a water fountain in the visiting room on your unit?

inmate request to staff.

THE COURT: Thank you.

Q As of this date has a water fountain been installed in the visiting room on the third floor?

A No, sir.

Q You stated that your scheduled visiting hours are from 4:30 to 7:30 on Monday, Wednesday and Friday. Do your visits in fact begin at 4:30 and end at 7:30?

A Since I have been there the visits have never started at 4:30.

Q To the best of your knowledge, what is the average starting time for visiting in your unit?

A I would say, to the best of my knowledge, between 5 and 5:30, and they end sharply at 7:15.

Q Do you have any visiting on Saturday and Sunday?

A No.

Q How does this affect your visits?

A Personally how it affects my visits is there is a financial burden placed upon my family because my wife generally has to take off an hour of work each time she comes to see me and she has been reprimanded by her boss. Because I have been there 16 months and she has been coming to see me like two, three times a week so there is a financial burden placed upon my family and there is also a burden placed upon me.

Q How do you mean?

A Well, I mean for 16 months I have been looking out the window on Saturday and Sunday and I see other visits arriving here to visit other members of the institution that have not cooperated with the government in any way, and here I have cooperated with the government, to the best of my ability, and I have never received any such visit like that.

Q Mr. Parker, were you ever housed in the protective custody at the MCC San Diego?

A Yes, I was.

Q Would you describe the visiting for persons in the protective custody unit there?

A Yes.

MR. SCHAFFER: Objection. I am not sure what relevance the San Diego visiting procedure has to this.

MR. YOUNG: At the very beginning of this proceeding you indicated that although you were reluctant to admit evidence as to other institutions you would be willing to hear evidence as to other MCCs. The visiting at San Diego is substantially different from the visiting here at New York's MCC, and if Mr. Parker can have a minute he can describe that.

THE COURT: I will take it for what it is worth, Mr. Schaffer.

Q Mr. Parker.

A Well, the visiting at the MCC in San Diego is very well organized. The regular visits for regular prisoners are up until 4 o'clock in the afternoon, and then they allow a half hour to go by to clear out the building and they start the fifth-floor witness floor visits at 4:30. So there is no intermingling with witnesses' families and possibly men that the witnesses are testifying against, their families also.

It's also different in the respect that when I was there there wasn't any particular visiting room. The witnesses' families came into the units and there was a coffee dispensing machine there, there were tables and it was just like a family get-together. The atmosphere was so relaxed, it was a privilege to get a visit there.

The only thing you could not do was go near the rooms, your proper rooms. But there was a lot of area where you could have coffee with your family and they would allow your family to bring in food for you to eat there.

(Continued on next page.)

Q All right. Mr. Parker, how many phones are there onyour unit?

THE COURT: Let me ask, did you have no searches after the visits in San Diego?

THE WITNESS: No, sir, no searches after the visit. In San Diego they run it on the premise, your Honor, that we are all men that have changed our ways.

THE COURT: You are talking about the protective custody?

THE WITNESS: Only the protective custody, yes, sir.

Q Mr. Parker, would you describe the phone setup on the third floor?

A The present setup?

Q Yes.

A Well, the present setup, there just was a recent change, right now it is -- you can call outside of the New York area between the hours of 3 in the afternoon and 11 in the evening.

Q And how many phones can you make calls on?

A If you are lucky, you can make two.

Q There are two phones or you can make two calls?

A No, you can place two calls.

Q How many phones are there, though?

A There's two phones that are long-distance, considered long-distance.

Q And how many phones are local?

A There is two local phones.

Q Mr. Parker, have you ever been involved in a fight over the use of the phones?

A Well, I wouldn't call it a fight. It was a brief, small altercation, a flaring of tempers, you could call it more.

Q And were you given an incident report as a result of that altercation?

A Yes, I was.

Q I show you Petitioners' Exhibit 50 for identification and ask you if you can identify this document.

A Yes, sir.

Q And is that the incident report for the confrontation you just described?

A Yes, sir.

MR. SCHAFFER: No objection.

(Petitioners' Exhibit 50 was received in evidence.)

xx

Q Mr. Parker, have you ever filed a cop-out concerning the phone situation?

A Yes, I have.

Q I show you Petitioners' Exhibit 51 for identification and ask you if you can identify this document?

A Yes, sir.

Q Is that the cop-out you were referring to?

A Yes, sir.

MR. SCHAFFER: No objection. I take it they are being received as evidence that Mr. Parker filed a cop-out or received an interim report, etc., and not for the truth of the matters asserted therein.

THE COURT: Well, insofar as he made the documents, I'll receive them for all purposes. You can cross examine about them.

Now, I don't know what you mean about the responses to them. You mean they should not be deemed to be truthful?

MR. SCHAFFER: No, your Honor. It is just that I would assume that the contents of these documents, both as to the statements made by the respondents and those made by the inmates, unless they are under oath as part of the testimony in this case they are not part of the record.

THE COURT: Well, documents that come from Mr. Parker I'll consider for any purpose. And if you want to question him about the veracity of anything in them, go ahead and do it.

MR. SCHAFFER: Would the same then therefore be true of the statements made by the respondents in these documents?

THE COURT: If they are here for cross examination, sure.

MR. SCHAFFER: No objection.

(Petitioners' Exhibit 51 was received in evidence.)

Q Mr. Parker, have you experienced any difficulties with the long-distance phone system?

A Yes, I have.

Q Would you explain what those difficulties are?

A Well, you have to wait long periods of time before you can get connected to the operator. And sometimes the operator will just not give you your full 20 minutes but just cut you off and say "Your time is up." And if you try to explain that "Well, I don't have my 20 minutes finished yet," she will just cut you off

A Yes, sir.

Q And your testimony is also that you have had some special visits granted, is that correct?

A Yes. I believe, over the period of the 17 months that I've been there now, I've had about three special visits.

Q Were those visits with your family or were they attorney visits?

A No. They were with my family.

MR. SCHAFFER: No objection.

(Petitioners" Exhibit 55 was received in evidence.)

xx

Q Mr. Parker, in the time that you've been in MCC, which I guess is almost a year and a half --

A 17 months.

Q -- approximately how many times have you gone to the roof?

A I would say I've gone to the roof about four times.

Q Is there athletic equipment inside the unit or exercise equipment?

A Yes, sir. There are two bicycle types of equipment that have been in there for several months. And then, since the Hon. Judge Frankel's visit to the area, they put a weight-lifiting machine inside.

Q Do you ever use any of that equipment?

A No, sir.

Q Do you observe other inmates using the equipment?

A Yes, sir.

Q Have you observed other inmates using the universal gym, what you've described as weight-lifting equipment?

A Yes, sir.

Q How does the existence of that weight-lifting equipment in the unit affect the unit? Does it have any positive or negative effects?

A Well, on one hand it seems to work off some of the tension. Since Judge Frankel's visit to the unit, the floor has trimmed its population down to 24 men and the unit is much more peaceful and tranquil and the exercising machine seems obviously to be working off some of the tensions, frustrations of some of themen.

But, on the other hand, the men that don't use that machine, the men that are more inclined to study or work with their mind, they find it a hardship because of the loud amount of noise when these weights go up and down, clank, clank, clank.

Q Would you describe how that is constructed? I'm not sure whether the Court ever saw this type of machine. Could you just describe what a universal weight machine looks like?

A Well, it is a maze of bars, and these weights, I guess they are about a foot long and six inches wide.

The weights are piled Up like this here on either side (indicating), and according to how much weight you want to lift up you take a pin out andput it on that weight and then you can get underneath the bars and press that amount of weight.

Q And when does the clanking occur?

A Usually when a guy starts getting weak and he starts pressing more than he could and he just drops the weight and you hear "boom."

Q And can you hear that in your room, for example?

A Yes. That travels right through a locked door.

Q Have you had any jobs while you were at MCC?

A No, I never had no jobs.

Q To the best of your knowledge, do any of the individuals in your unit have jobs?

A Yes, some of them do.

Q And what are the nature of those jobs?

A Mostly it is maintenance of the unit, maintenance men. And there is the kitchen, the kitchen crew, which consists of three men; and a clerk, the unit clerk. And I guess that's about it. Perhaps eight men are working.

Q Are any educational programs conducted in your unit?

A Yes, sir.

Q Could you describe those, please?

A Well, there is an Empire State College that has come into the institution, and our floor was opened for enrollment, it seems to be about a year ago, and I, among several other men, did enroll for classes with Empire State Mutual. They call it a College Behind Walls. It is mostly a correspondence college. But once a week they provide a teacher to come in and tutor.

Q Any other programs?

A Yes. There is a creative writing class which I, amongst other men, have enrolled in.

I took up a course in geology. But that was part of the Empire State scholastic course.

Q All right. Any other programs available to you?

A No. Just the programs that we can put together ourselves, such as religious prayer meetings in the evenings, things like that.

Q How about entertainly programs? Have you had any?

A No, I've never seen any entertainment programs in the MCC.

Q Throughout the year and a half you've been there?

A No, sir.

Q Mr. Parker, hace you ever had any mail from an attorney or Court opened outside your presence?

A Yes, sir.

Q Could you tell us how frequently this happens?

A Not frequently but depending on who is on duty. Some of the officers would take that mail into a side room where they hold the supplies on the floor, and they use that, they double it up, as sort of like an officer's room, officer's office, and they would open the mail in that room, claiming that there's too many men crowding around the pool table when the ordinary hour for handing the mail out is and it is more convenient for the officer, he will explain to us, to open it in his office and then bring it out and give it to us.

Q Mr. Parker, have you ever not received mail or discovered that mail that was sent to you at MCC had not been delivered to?

A Yes.

Q I show you Petitioners" Exhibit 56 for identification and ask you if you can identify this envelope.

A Yes, sir.

Q Whais the postmark on that?

A The postmark on it is December 9 and a December 10th postmark, indicating it was sent back from New York, I guess.

Q What year?

A 1976.

Q And were you at the Metropolitan Correctional Center at that time?

A Yes. I was on the floor when that letter arrived.

Q But was this letter delivered to you?

A No, it wasn't delivered to me. It was sent back.

MR. SCHAFFER: No objection.

xx (Petitioners' Exhibit 56 was received in evidence.)

Q Incidentally, Mr. Parker, the way the mail is addressed to you is JP00685, Unit 3?

A Yes, sir.

Q And is the reason your initials are used because you are in protective custody?

A Yes. That is for our own security.

Q Mr. Parker, we previously had a description of the uniforms that inmates are required to wear at MCC. Are you required to wear those uniforms in Unit 3?

A Yes, sir.

Q I'm referring now to the jump suit type uniforms.

A Yes.

Q Are you required to wear them at all times?

A Yes, unless you have a sweat suit.

Q Where would get such a sweat suit?

A You would have to buy it through the commissary.

Q But, other than that, you have to wear the uniform at all times?

A Yes.

Q Would you describe the effect of wearing that uniform, what effect it has on you?

A Well, you kind of lose your identification and you know that you are just a number. It is a constant reminder.

Q Are you required to wear that uniform on visits?

A Yes.

Q And does it have any effect on your visit, positive or negative?

A Well, I could only say my own judgment, that the uniform, amongst other things, was having a negative psychological effect upon my three-year old daughter.

MR. SCHAFFER: Objection.

Q Is there any observation on which you base that?

THE COURT: I'll allow it.

Q Are there any observations on which you base that?

A Yes. When my daughter first came here --

THE COURT: Do you have any children, Mr. Schaffer?

MR. SCHAFFER: Yes, I do, your Honor.

THE COURT: Then you know.

Q All right. Go ahead and explain?

A Well, m6 daughter came here from Panama, the ion testimony that is not admissible.

THE COURT: He might be qualified to have an opinion. I will allow it.

Q Do you think you would have these same feelings?

A I am sure I would not have because I wouldn't be acting like a sneak and that is contrary to what I am trying to rebuild my character in, eliminating those type of traits.

Q Mr. Parker, did there come a time when you requested the mother of your child not to bring your child to visit you any more?

A Yes.

Q Why did you make that request?

A Well, due to the very hot temperatures in the room over the New Year's weekend, the three visiting days there, New Year's, the following Monday and the following Wednesday, my family left once early, and the next time they came back on a Wednesday I seen that my child was very pallid and she didn't have any color in he face. Her face is always rosy-cheeked and she had no color in her face and her eyes were black, underneath her eyes it was black and she just looked sick. She just wasn't the same little girl that had come to

Panama -- come from Panama. I told my wife, "I think this is having a detrimental effect on the child and I don't think you ought to bring the child here to see any longer."

Q Mr. Parker, while you were in lock-up was your child baptized at MCC?

A Yes.

Q Were you permitted out of lockup for that baptism?

A Yes, I was permitted to attend the baptism but I was not permitted to have any type of time with my family. There had been a death in my wife's family at that time.

Q Speak up.

A There had been a death in my common-law wife's family which necessitated my common-law wife to leave this country and go back down to Panama because the person who died was her sister and she left two young children, ages 16 and 10 years old, two girls, down there in Panama, and my common-law wife is the godmother of the 10-year-old girl down there and that necessitated her to go down there and take care of the children, and I was pretty shook up about this because the girl who died was only 34 years old and she had a stroke and for some reason I was thinking maybe lightning would strike twice in the same spot, and my daughter was not baptized up until that point so I made arrangements with Reverend Lothrup, the MCC chaplain, to baptize my child, to ask for permission if my family could come to the MCC on the way to the airport and baptize my child before she got on the plane.

Q Mr. Parker, did there come a time when you had a right with an inmate Black?

A Yes. It was no fight.

Q Would you describe what happened?

A Well --

MR. SCHAFFER: Objection. May we inquire as to the relevance of this incident?

THE COURT: Yes, what is the relevance, Mr. Young?

MR. YOUNG: Mr. Parker had a right and he received an incident report and that incident report was subsequently expunged and the warden at MCC objected to the expungement even though it was done in Washington. This would be Mr. Parker's testimony. Mr. Parker was in a wheelchair at the time and his brother was in the unit, the Unit 3 unit, with him, and his brother was being insulted by another inmate and Mr.

Parker intervened even though he was in a wheelchair. He was subsequently given a shot for being in a fight in a wheelchair. That shot was expunged but it was over the resistance of the warden at MCC.

THE COURT: You haven't asnwered Mr. Schaffer's question. What is the relevancy of it?

MR. YOUNG: It shows an incident where a person could not be in a fight when he was in a wheelchair.

THE COURT: Objection sustained. I won't hear any of it.

Q Yas your room ever been searched?

A Yes.

Q How often?

A Just twice sicne I have been there.

Q Have you been permitted to observe those searches or not?

A No.

Q Has anything been seized from your room during those searches?

A Yes.

Q Could you describe what items were seized?

A On the first search a tape recorder was confiscated and several tapes that I had made, mostly pertaining to my life story,and the last one was right after the holidays of this year, 1977, and at that time I had about six neckties in my drawer and they were confiscated and four of them were lost.

Q The tape recorder was subsequently turned over to your wife, wasn't it?

A Yes.

Q What happened to the tapes?

A They were also turned over to my wife.

Q What was the condition of your room after these searches? Was everything put back into place?

MR. SCHAFFER: Objection.

MR. YOUNG: The respondents maintain that everything was put back.

MR. SCHAFFER: The question was what was the condition of the room.

THE COURT: Yes, try to watch that.

Q What was the condition of the room after the search?

A Well, the condition of the room after the first search with the tape recorder was pretty good condition. It just took me a few minutes to put it back together.

Aftet the second search things were pretty must just messed up and pushed all over the place.

Q Could you be more specific? Could you describe what was messed up and pushed all over the place?

A Yes, there were legal papers and everything thrown all over the bed because I had them in piles on top of the bed and they were just pushed all over the bed and some of them were on the floor. I guess it took me about a half hour, 45 minutes, I am not sure, to fix the room up.

Q Do you ever keep any food in your room?

A Yes, on occasion I have kept food in my room.

Q Are you permitted to receive food packages from outside?

A No, sir.

Q Have you ever been criticized or been told by unit staff members that you are not supposed to keep food in your room?

A Yes, I was.

Q Could you describe those incidents?

A Well, you get hungry at night and there is nothing to eat. If you don't have commissary money, gious services that are conducted on your floor?

A I believe for nearly the first five months that I was there there was no religious services on the floor. And I contacted the Witness Protection Program in Washington, as well as did my wife, and it was then that the warden allowed the chaplain and the Catholic priest to come on the witness protection floor, because up until that point nobody was allowed on that floor.

Now the Protestant chaplain has been coming steadily there twice a week for about one year, and the Catholic chaplain has just started services also about six or eight weeks ago, and he comes up once a week on Sundays.

And also there is a Muslim minister that comes in to minister to those men under that religion.

Q You didn't mention the Jewish inmates. Are there services provided for them?

A It seems that they have pretty much of a hard time over there. I don't know. Because there is always a hassle for them to get their religious services. As a matter of fact, as a unit representative I was called upon on two occasions to

BP-9's or BP-10's on the protective custody unit?

A Not really, no.

Q And have all your BP-9's been answered?

A Yes, I believe so.

Q Mr. Parker, you testified that you participate in the Empire College program. Do you receive college credits for the courses that you take?

A Yes.

Q And how many such courses have you take so far?

A Two courses. The second course, I've just been informed now --

THE COURT: Excuse me, gentlemen. I have somebody who wants to come in. Do you think we can break security enough to let them in?

MR. SCHAFFER: I think would probably be all right.

THE COURT: Okay. Bring them in.

Go ahead until they come in.

Q You were saying that you have taken two courses at the Empire State College program?

A Yes. And I just have been informed that the sociology courses were 12 credits.

Q And you successfully completed that course?

A Not yet.

started it, yes.

(Pause.)

Q Mr. Parker, did you have occasion, while at the MCC, to break your foot while exercising on the roof?

A Yes.

Q When did that occur?

A I believe it was in March of 1976.

Q And how long was your foot in a cast?

A For approximately four months.

Q You testified that you had gone to the roof for recreation four times. Tell me, when was your foot strong enough to exercise again?

A Well, it happened in March, and I got out of the wheelchair around July, but I couldn't walk right until around September, after September, probably.

Q Do you know how many times a week the third floor unit is taken up to the roof for recreation?

A Yes. They are taken up, weather permitting, every day for one hour.

MR. SCHAFFER: Your Honor, may I have a moment?

THE COURT: Yes.

(Pause.)

MR. SCHAFFER: We have no further questions at this time, your Honor.

THE COURT: Right, okay. That is the only purpose. Fine. If I had to adjudicate on it, I might make some adverse finding about it, but I won't.

Q Miss Braunig, would you please tell us when you were first convicted of a crime or pled to a crime?

A In New York?

Q No, anywhere.

A I pled guilty in Montreal to signing a fraudulent statement, which is what they call making deposits up there in March of 1976.

Q What was your sentence?

A Two months.

Q Were you subsequently convicted here in New York of any crime?

A Yes, I was. Four counts of the original Indictment 76 Cr. 21 before Judge Lawrence W. Pierce.

Q What was the nature of those crimes?

A I explained the one in Canada. The one in New York was aiding and abetting mail fraud, use of a false and fictitious name and perjury.

Q When did you first arrive in the Metropolitan Correction Center?

A On the 13th of July, 1976.

Q What were you housed in?

outside and not be able to see it, because there are big stone walls and there is barbed wire across the top and it just isn't worth the emotiona trauma of going up there.

Also the pressure in the elevators of the amount of bodies they put in the elevator and the wait between the locked doors is very uncomfortable. The wait to go up to the roof and the wait to come down from the roof is very long, and it is just not worth the hassle.

Also there are very few jackets for the cold weather.

MR. SCHAFFER: Your Honor, I would like to object to this kind of general testimony. If Miss Braunig has specific knowledge of specific incidents where there was a certain number of jackets, where the wait was so long, if there were a certain number of people in the elevator. Then let counsel ask those questions, but this kind of general description and opinion is of no probative value.

THE COURT: You can cross-examine.

Q By the way, Miss Braunig, have you gone to the roof in your stay at MCC?

A Yes, I did. During the summer I did.

Q All right. Thank you.

You testified that you have only been off the unit once since you have returned?

A Yes, that was to go to sick call one day.

Q What is the effect of remaining in the unit except for that one exception?

A It is very frustrating being confined for long periods of time with the same people day after day without being able to have any kind of mobility at all. I notice because of my experiences in the other institutions I have been in. I can tell the difference in my own attitudes. When I came back from Alderson, I was in a very open, warm frame of mind, and I find myself snapping, becoming extremely irritable, impatient, tense, very angry. I wake up in the morning very angry. It is extremely frustrating because it is a very small area. When you have been confined there 24 hours a day and when you live, eat and sleep with the same people, there is no way to get away from them, to calm down or to be by yourself.

Q Miss Braunig, have you had any attorney visits on the fifth floor. First of all, where do the residents on the fifth floor have their attorney visits?

A They normally have them in the regular visiting room on the south side of the fifth floor.

Q Have you had attorney visits there?

A Yes, I have.

Q Could you tell approximately how often?

A I would say at least 10, possibly 12 since July.

Q When did these occur?

A During the regular visiting hours between 4.30 and 7.30 which is when the social visits are as well.

Q Would you describe the conditions of attorney visits on the fifth floor?

A Yes. They are completely without purpose and value because of the fact that -- well, there are many problems there. There is no privacy, it is very difficult to try to concentrate when the noise level is as high as it is when you are afraid of being overheard. When the little children are running around climbing all over your attorney. I remember one attorney, Mr. Marx had a very difficult time with it. Picking up papers. There are no tables to work at. There are very few tables and they are taken up with people leaning on them. It is impossibloe to write. It is impossible to bring legal papers in and out of the visiting room.

Q Have you encountered specific instances where you have had difficulty bringint legal papers into the and the reason for the visit. They go through terrible searches downstairs, considering the fact that they are attorneys. It is really very embarrassing to them. They go through interminate waits waiting to go up to go to the visiting floors. Visiting women is a little different than visiting men, because men are seen for attorney visits on 11, so if a man is on the 9th floor, or the 7th floor or the 5th floor during attorney visiting hours, he has to be brought up by internal security and the wait sitting in the visiting room with the attorney has been upon occasion 45 minutes to an hour.

Q Have you personally experienced that?

A Yes, I have with the attorneys. I have.

Also the wait in the lobby is very, very long. The attorneys feel very frustrated and they would rather not have to go to the MCC to visit their clients.

Q Have you encountered instances where an attorney has refused to come to the MCC?

A Yes, I have, I have.

Q Could you describe those instances?

MR. SCHAFFER: Objection.

THE COURT: Sustained.

MR. YOUNG: Could I ask the basis for that?

THE COURT: Look, if the visiting conditions are such that some member of the bar doesn't go there on account of the conditions, he ought to come here and be cross-examined about that, and I would ask him some questions myself. But I am not going to allow that on the basis of hearsay.

Q When you have gone with an attorney to the MCC, approximately how long have you had to wait on the average before seeing the person you went to see?

A Is that including the time waiting in the lobby?

Q Yes. From the time that you entered the front doors at MCC until you actually sit down with the individual that you were coming to visit.

A The shortest time period I ever had to wait was approximately 40, 45 minutes. The longest I can remember was once two hours.

Q Could you tell me when the scheduled visiting hours for attorneys are, let's say on the fifth floor?

A If my memory serves me correctly, on the fifth floor or the 11th floor?

Q Where are you now?

A The same as the visiting social hours, 4.30 to 7.30, I believe.

Q Are the visits allowed to last that entire papers to attorney visits?

A I have only been permitted to bring legal papers really without a problem when my attorney visits with you, Mr. Young. With several, with other attorneys I have been given a very difficult time. On one occasion they were physically taken out of my hand and put back in my room, and acouple of times I've been told not to bring them at all.

Q Miss Braunig, are you subjected to any type of search incident to attorney visits?

A Yes. I am subject, I have been subjected to a strip search which is very degrading.

Q Is this before or after the visit?

A After the visit.

Q Would you describe the nature of that strip search?

A We are required to take all of our clothing off, to squat, to expose. It's very, it's very embarrassing.

Q When you visit with an attorney on the third floor are you also subjected to such a search?

A Yes.

Q Who conducts that search?

A It's different every time. One of the women officers or whoever is working in the office down there.

Q Were you ever granted legal visiting rights before you were incarcerated in MCC?

A Yes, I was, as co-defendant.

Q That was with Mr. Gardner?

A Yes. And I was also the acting as research assistant for the attorney that was representing him in one of his cases.

Q Were you ever denied those visits?

A Yes, I was.

Q Could you describe the circumstances surrounding that denial?

A I was told by the Associate Warden of the MCC at that time, Mr. Kenny I believe his name was, that the Assistant U. S. Attorney, Mr. Rakoff, had said that it was improper --

MR. SCHAFFER: Objection.

MR. YOUNG: Your Honor, I believe this is an admission by one of the --

THE COURT: She was told By an attorney that Mr. Rakoff had said.

MR. YOUNG: She was told by Mr. Kenny who was a former staff member of the Metropolitan Correctional Center.

THE COURT: That Mr. Rakoff had said so-and-so?

THE WITNESS: Yes. I will --

THE COURT: No, I won't allow it.

Q During the period before your legal visits were denied did you encounter any problems with those legal visits?

A Yes, as far as the wait and being able to go upstairs. The long wait in bringing Mr. Gardner up to the 11th floor. The problem he had in bringing legal papers In and out of the visiting room.

MR. SCHAFFER: Objection.

THE COURT: Sustained.

Q When you had legal visits with Mr. Gardner where did they take place?

A On the 11th floor.

Q What were the legal visiting hours?

A From 4.30, if my memory serves me correctly, I believe they were from 4.30 to 6.30 every evening except for the weekends.

Q What was the approximate time at which you normally arrived at the 11th floor?

A The count sometimes were not cleared until 5.30, 6 o'clock. On two occasions that I remember the visiting time was extended by an hour because no one had been permitted upstairs until 6 p.m. that evening.

Q On that particular occasion what time had you arrived at the MCC?

A 4 o'clock.

Q And what time did you arrive on the visiting room?

A 6 o'clock.

Q Miss Braunig, prior to your incarceration did you have any social visits with persons at the Metropolitan Correctional Center?

A Yes, I did.

Q Would you please describe the nature of those visits?

A I was on Mr. Gardner's visiting list. I was listed as friend and secretary and those visits were separate from the attorney visits.

Q Did you encounter any problems in connection with those visits?

A Yes, I did.

Q Would you describe those problems?

A Long waits in the lobby, sometimes an hour and a half. Searches again. I was treated asif I had been an inmate at that point, not only I, but all the other people.

MR. SCHAFFER: Objection.

THE COURT: Yes.

Q Just describe action.

A All right. The way they went about the searches, the way they searched the bodies of the people coming in.

Q Would you describe it?

A Well, they have a kind of, I don't know what you call it, it's an instrument with a wire on it that detects metal, and they run it up and down your body to see if you're carrying any kind of metal after you've taken your change out of your purse. And I would, when they were searching with the metal thing they would pause over certain parts of my body for long periods of time and make wisecracks and things like that.

Q Approximately on the occasions when you came to social visiting how many officers were there at the lobby reception desk?

A On most occasions it was just one officer. On a few occasions there were two officers. On those occasions the two officers would spend a great deal of time speaking to each other about their plans for the weekend, which I overheard, about many other things other than processing the paper work for the visits.

Q When there was only one officer on the desk approximately how many other times was there only one officer or what percentage of the time?

A I would say 70 percent at least.

Q Would you describe the duties or would you describe the actions of that person from the time you arrived at the MCC?

A Okay, if I can remember now. They first look in the inmate's, have the person, the visitor fill out a form. Then they look in the inmate's file to see if the person is on the visiting list and how many visits that week the person had used to see if they still have -- they're only permitted only three visits.

Then they write the room number down of either the dorm or the room that the person is in. Then the visitor goes through a, something like they have at the airport. It's a big, I don't know what they call it. It's very large. It's maybe eight, nine feet tall. That's also a form of a metal detector and you go through that and they look on the dials there. I don't know what they call that instrument. Then they have something that looks like microwave oven that's an x-ray machine that they put briefcases or purses or things into for sharp metal objects.

Then also if either if either the metal machine is not working or if they want, feel that they want to they will go with that little machine and check the bodies of the people. Sometimes they have to call on the floor to see whether or not the visiting room is open yet. I think that's about -- but that's quite a lot for one person to do when there are sometimes --

MR. SCHAFFER: Objection.

THE COURT: You were going to say when there are sometimes. You were going to give a number of people you observed. I will allow that.

A I would say the amount of visitors when I was being processed can be anywhere from 20 to sometimes 40, 50 visitors on weekends waiting to go upstairs at a time.

Q Miss Braunig did you ever come to MCC for the purpose of a special visit?

A Yes, I did.

Q Can you describe your experiences on those occasions?

A Yes, a memo could not be found in the file. I would then ask to see someone, some --

Q Was this on every occasion or can you be specific?

A Most of the occasions. If clothing was to be left or if papers were to be picked up that had been notarized to be brought over to the court or whatever. I would be told that there was no memo in the file. I would then ask to speak some supervisor. And by the time I got through with the lieutenant or one of the associate wardens, somebody would miraculously find the memorandum.

Q Could you just explain what a special visit is by the way?

A It is a visit either other than during the normal visiting hours or it is an extra visit if they have used up the three visits that week or it is a visit, a memorandum allowing the clothing to be left or papers to be picked up or left. It can be for people who have come in from out of town or not on somebody's visiting list.

I know this is my experience as a unit clerk having typed up the memos for the special visits as well as being a visitor.

Q Miss Braunig, did you ever come to MCC for a visit and not actually have that visit?

A Yes, I did.

Q Could you describe those occasions?

A Several legal visits I was denied, and several special visits.

Q Were you ever advised that the person that you had come to visit was not at the MCC?

A Yes. Yes, at one occasion I was told Mr. Gardner was not there, he was in Danbury. I said, "That's impossible. He called me this morning on the telephone from the MCC."

Q Could you tell us the date of that or the approximate date?

A It was in the summer of 1975. Excuse me, '75. Yes, it was '75.

Q '75?

A '75, because the summer of '76 I was incarcerated. It was in the summer I believe. It was warm weather. I remember not having a coat on one occasion. I can't remember the exact date.

Q You're sure it was the summer of '75 because that was the --

MR. SCHAFFERL: Objection.

A Yes, it was, it was in August.

Q Both as an inmate and as a visitor approximately how long have your social visits lasted?

A It depends upon the officer in the visiting room. If Officer Brown, the older one with the gray hair, there is more than one Officer Brown at the MCC, is in the visiting room they do not last for more than an hour.

No matter how few people are in the visiting room he terminates them at an hour, no matter how far someone had come.

On one occasion I went there with a gentleman who had come in from Buffalo to see Mr. Gardner, who was a potential witness in a case, and they made him leave after an hour. He'd flown all the way. He'd flown in from Buffalo for that one particular visit and there were very few people in the visiting room that day.

Q Other than the conditions that you described concerning the attorney visits on the fifth floor visiting room are there any other conditions that affected social visits if you can recall at this time?

A You mean problems as a visitor or as an inmate?

Q Both.

A First of all the bathroom is constantly locked and the officer never has a key, which is hard on children and hard on older people who have not got as much control. It's also hard --

returned to the MCC?

A No, I have not.

Q Were you permitted social visits with Mr. Gardner prior to your incarceration?

A Yes, I was.

Q After he was incarcerated at MCC?

A Yes, I was.

Q Miss Braunig, would you describe the number of telephones that are located on 5 South?

A There are two telephones which are connected with a switchboard downstairs, one for prepaid, one for collect calls.

There are also two pay phones, one of which is constantly out of order. It is out of order at this time.

Q How long has it been out of order?

A Since I have been back. And it was -- it's been out several times before I left.

Q I didn't hear the last?

A It was out several times before I left for Alderson in November.

Q For what periods of time was it out of order during that period?

A Approximately two or three weeks. In late

October, early November, that I'm aware of.

Q Have you made use of the long-distance telephoning system?

A I've attempted to. I did place two calls successfully over it. It is a very frustrating, very --

MR. SCHAFFER: Objection, your Honor. The question has been asked and answered.

Q Would you describe any problems that you have had with the long-distance telephone system?

A Where do I begin? First of all, there are 10-minute time slots allotted for each call. It takes sometimes 45 minutes to get an operator to pick up the extension. So therefore --

Q Has it taken you that long?

A Yes. It has taken me -- on one occasion it took me 45 minutes.

Q How long does it normally take you? What's the normal?

A The normal is 20 minutes, 20 minutes to have her pick up the extension downstairs.

Q Any other problems?

A Well, that leads to breaking in on someone else's time which leads to pressure and tension and arguments. It's impossible to speak on a telephone when you have three people behind you who you are already on their time because it was such a long time before you could pick up on the extension.

Q Have you encountered situations where you have been speaking on the phone and there have been people waiting behind you?

A Yes, constantly, every time.

Q Have you been speaking during their time periods?

A Unfortunately, yes, I broke into someone else's time period and someone else was very anxiously worried that that person was going to break into theirs.

Also, the real problem for me was attorney phone calls, because I have an attorney who lives in Spring Valley, an attorney who lives in New Rochelle, an attorney who lives in New Jersey, and those are the three, my three lifelines, to have to use that phone to communicate with them being only allotted 10 minutes on one occasion.

The other was, the woman who was running the switchboard was coughing and breathing into the phone so I knew she was listening in on the phone call..

I've had the phone call cut off in the middle of a sentence when one of them was telling me when I was coming back into court.

There is no privacy. I'm afraid to discuss anything that would be vaguely related to the case over the telephone other than in the most general terms because of the feeling that phone calls are being listened in on. There is no privacy.

MR. SCHAFFER: Objection. Miss Braunig's feelings that her calls are being monitored are not admissible. She's testified as to one incident where she heard the operator cough. I think that's all --

MR. YOUNG: She's also testified as to having people waiting behind her to make telephone calls and so on.

THE COURT: All right, let's go ahead.

A All right.

Also, while you are doing that, if I'm on the phone with my attorney and there are two or three people waiting behind me, they are listening in on my phone call.

Q Are the phones inside a phone booth or are they not?

A No, they are not, and they are in the

most heavily trafficked section of the multipurpose room,where you get the feedback from the record player up above on the balcony when there is a dance class, you get the feedback from all of the radios, you get the feedback from the television, that's always very loud. Every time that door opens mechanically it makes a very loud clicking, slamming sound, and you hear that.

You hear -- it's right near where the food is served, so if you are called in during the meal the noise level is just horrendous, and people ask -- asking to have the television lowered. It's tantamount to askint to have yourself punched and kicked and hit and pushed.

MR. SCHAFFER: Objection.

Q Have you ever heard anybody else making a phone call?

A Yes, I have.

Q Have you heard parts of their conversation?

A I've tried not to listen, but, yes, I have.

Also, the two phones are so close to each other, but then you are only allowed to use one at a pretrial people than the sentenced people.

Q Miss Braunig, have you ever observed any disputes between inmates where any problems developed among inmates because of the phones?

A Yes, I have. There are three major areas of tension. The main one is medication. The next one is the telephones, as far as order is concerned. And the telephone situation is really one of the major causes of the upheaval in the area.

Q Miss Braunig, have you ever had occasion to be in the third-floor area and observe the telephone switchboard?

A Yes, I have.

Q Have you had occasion to observe the individual, the operator who operates that switchboard?

A Yes, I have.

Q Has that same individual conducted strip searches on you?

A Yes.

Q Is this during the hours that she -- would you explain the circumstances surrounding that?

A When I came back from court, when I was leaving for court, after an attorney visit. This

Q Miss Braunig, you tesrified as to arguments or problems that had been caused by the phone. Can you identify any specific instances?

A Yes. One time my life was threatened because of the telephone. It was an extension of an ongoing problem with one of the inmates but she threatened my life over the telephone. At least that was the point of tension that she used.

Q Any other times which you either observed or experienced?

A Yes, I have seen fist fights. It is very odd As a matter of fact, there was one fight -- the problem is that the tension is created by the telephones. It does nto get resolved in the telephone, it gets carried over to the meal situation, to the television situation, but it begins at the telephones.

Q Miss Braunig, it has been stipulated between the parties that conjugal visits are not permitted at the MCC. Can you testify on the effect of nonconjugal visits?

THE COURT: What do you mean by conjugal visits? Do you mean visits by married people as the word in the dictionary I think means?

MR. YOUNG: I wasn't alluding to that.

MR. SCHAFFER: Objection.

THE COURT: Sustained.

Q Miss Braunig, would you describe the equipment for physical exercise on your unit?

A There is a bicycle with one wheel missing that you use -- that has a speedometer on it. There is another kind of a thing like a bicycle without a wheel that you stand up and move your feet. There is something that looks like a jump rope attached to the wall, but no one knows how to use it, and there is one of those big round balls that are too heavy for the women to throw.

Q Have you observed anybody using this equipment?

A I have observed people using the bicycle, but that's about it.

Q How many people have you observed using the bicycle?

A Four or five.

Q This is during the entire time of your stay?

A Yes.

Q At MCC?

A Yes.

Q Miss Braunig, could you tell me when the roop-top visiting schedule -- what hours in a given day?

A To the best of my knowledge, it runs exactly parallel to the visiting hours even on the weekends.

Q Approximately what are those hours?

A I don't know if it is as long as the visiting hours, but it runs at the same time as the visiting schedule. I believe it is from 4.30 -- no, it would have to be after dinner. I am really not positive, but I know it is during regular visiting hours in the evening and on the weekends it is in the morning or in the regular visiting hours are.

Q Miss Braunig, are you presently employed at the Metropolitan Correction Center?

A I am forced to work at a job.

MR. SCHAFFER: Objection.

THE COURT: Sustained.

A I am not being paid. I don't know how you call it being employed.

Q Miss Braunig, are you required to work at the Metropolitan Correction Center?

A Yes, I am.

Q What job are yo u required to work at?

A Unit kitchen and unit sanitation.

Q Have you been advised as to what your custody is at the Metropolitan Correction Center?

Center?

A Yes, I have.

Q Will you describe that experience?

A While I was preparing for my case I had occasion to ask for Title 18, two different books, one on searches and seizures, and one on a bail question.

Q How did you request those books?

A I filled out a book request form. I did not receive that. After a period of two weeks, I then asked Mr. Gardner since he had worked in the law library before to please speak to somebody to try to get the books up to me. He was able to get the books and brought them to me through the visiting room, but they did not have the packets in the back.

(Continued on next page.)

Q Have you had any other occasions to use the law library?

A No, I have not.

Q Is there any reason why you haven't used the law library?

A Yes.

MR. SCHAFFER: Objection.

THE COURT: On what ground?

MR. SCHAFFER: Relevance.

THE COURT: Overruled.

Q Will you answer the question?

A Yes. The reason I have not used the law library is because without access to the index I don't know how to go about looking up cases or looking up books without being able to go down and thumb through the books myself.

Q Miss Braunig, have you ever requested that legal documents be Xeroxed or notarized?

A Yes, I have.

Q Have they been Xeroxed and notarized in response to your request?

A I've been told that the Xerox machine is broken every time I've asked to have something copied. I've been told that the Xerox machine is not working.

Q Miss Braunig, did you submit a cop-out concerning your inability to get documents Xeroxed?

A Yes, I did.

Q I show you Petitioners' Exhibit 90 for identification and ask you if you can identify this document?

A Yes, I can.

Q Is this the document you're referring to?

A Yes, it is. There is more to it than just the Xeroxing.

Q You mean there is more to this cop-out?

A Yes.

Q Did you receive a response to this cop-out?

A Yes, the disposition is written on the bottom.

Q Did that disposition, or did any staff member respond to you concerning your Xeroxing per se?

A No, they did not.

MR. SCHAFFER: I have no objection.

(Petitioners' Exhibit 90 was received in evidence.)

xx Q Miss Braunig, were there any typewriters on 5 South?

A There are two typwriters, one of which is inoperable

Q How is it inoperable?

A All right, specifically the legal mail. I would have received most of my legal mail opened outside of my presence. It is only recently for a period of about a week that I received legal mail stamped and sealed and opened in my presence.

They have now reverted to the other. I'm missing legal mail that I know was sent to me.

MR. SCHAFFER: Objection.

THE COURT: On what ground?

MR. SCHAFFER: The last statement, your Hono r, I believe she stated that she has not received the legal mail that she shows was sent to her.

THE COURT: I suppose strictly speaking that is correct.

All right, I'll strike that out.

Q Have you encounteed any delays in the receipt of your mail to the best of your knowledge?

A Yes, I have definitely. The most recent one is the letter from Judge Epstein.

Q Who is that judge?

A The Chief Judge.

Q Of this District?

A Yes.

MR. YOUNG: I think the respondents will

stipulate that is Judge Edelstein.

THE WITNESS: Excuse me. I'm sorry.

Q How did you know that that letter was delayed?

A Because the date I received it on the 3rd of March and the date of the letter was February the 18th. That's the same Zip Code building next door and it's coming from a judge's chambers. I can't believe that it took that long to get to the MCC.

Q You testified that you received legal mail open?

A Yes, I have, definitely.

Q Could you give us specific examples of it?

A Well, specifically my appeal, the freedom of information request from the Regional office regarding my appeal with the tape cassette of my appeal proceeding and all of the papers relating to it.

The letters from Attorney Donal Lowey with the Government's reply to my appeal and our supplemental brief which was opened outside of my presence. Co-defendant mail has been opened outside of my presence.

Q Miss Braunig, have you submitted complains to the administration concerning your mail?

A Yes, I have.

Q And are some of those already in evidence?

A I believe so, yes.

Q Do you have a particular problem with making out an application to the Court recently?

A Yes, I did.

Q Would you describe that problem?

A It was pro se motion. It was a Rule 35 for Judge Pierce for the case 76 Cr. 21. I sat up two nights in a row typing, working on it to get it out in order to get it to him before Friday before the weekend. I found two days after I had put it in the mailbox that it was still sitting in the mailbox.

I then hit the ceiling and called the lieutenant who was on duty, who was Lieutenant Holly, and asked him to please get somebody up there to take it out of the mailbox to get it into the mail.

He said he was unable to because only a case manager Swanson had a key to the mailbox and there was other legal mail in there at the time besides my Rule 35.

Q Miss Braunig, I show you Petitioners' Exhibit 91 and 92 for identification and ask you if you can identify them?

A Yes, I can.

A Yes.

Q By the way, do the rooms in 5 South have toilet facilities in them?

A No, they do not.

Q If a woman is locked in her room, as you have described you have been on two occasions how do you use the toilet facilities?

A You don't.

Q I'm sorry.

A You bang on the door and bang on the door and hope somebody will talk the officer into coming over and letting you out. It's very degrading.

Q And have you ever observed anyone banging on the door and not having an officer come?

A Yes, I have.

Q Could you describe that incident or incidents?

A Well, I can give you the names of the women but I can't remember the exact times. A lot of people have been dead-locked a great many times during my stay at the MCC.

Q Could you give us a specific example?

A Well Deborah Green several times refused to let her out to go to the bathroom when she was supposed to be showered. Kay Harris, Toni Booth. Myself being in the back room down underneath, I was dead-locked from 12 to 12:45. I had a very hard time getting someone's attention.

Q From your personal knowledge, have you ever observed an occasion when an individual woman was dead-locked and there was no officer was on the floor?

A Yes. The officer would be on the other side of the floor. The women try to get their attention, but it's not -- it's not adequate.

Q Miss Braunig, during the times that you have been at the Metropolitan Correctional Center have you ever observed any non-English-speaking inmates in your unit or elsewhere?

A Yes, I have.

Q Could you describe what nationalities or what languages those individuals were?

A Chinese, French, one African thing. I think the basis of it was French. And a great deal of it is Spanish non-English-speaking people.

Q Based on your personal observations have you -- at the times that those individuals were on your unit were the notices on the bulletin board also posted in the languages of those individuals?

A No, they were not. There is only one bilingual notice, and it was posted on the refrigerator, and that was Spanish and English.

Q To the best of your knowledge, when the individuals you have just described have been on your unit has there always been a staff member on your unit that spoke the language of the individual?

A No. There are not -- I have never known a Spanish-speaking person to be an officer on our floor, anybody who spoke Spanish.

The girls try to help, but none of the staff. There is a Spanish teacher. That's the only one.

Q Is she always available?

A No, no, no, not at all.

Q Miss Braunig, do male officers guard the women?

A Yes, they do.

Q Have you ever observed an instance where the only member of the MCC staff on your unit was a male officer?

A Constantly, every night.

Q Miss Braunig, when you first arrived at the Metropolitan Correctional Center you testified that you were housed in 5 South.

A Yes.

Q What was your status at that time? Were you --

A Pretrial.

Q Were you convicted?

A Pretrial.

Q Pretrial?

A Yes.

Q Did you subsequently become convicted?

A Yes, I did.

Q Did you remain on 5 South?

A Yes, I did.

Q When you were pretrial, to the best of your knowledge, were there any convicted individuals on 5 South?

A Yes.

Q When you were convicted, to the best of your knowledge, were there any pretrial people on 5 South?

A Yes.

MR. SCHAFFER: Objection.

THE COURT: Well, I suppose strictly speaking she doesn't know, Mr. Young.

MR. SCHAFFER: It is stipulated to, in any event, your Honor.

when you were at the Metropolitan Correctional Center?

A Yes, it has.

Q On approximately how many occasions?

A Four or five that I can think of off the top of my head.

A Could you describe, first of all -- I withdraw that.

Was anything seized during any of the searches?

A Yes.

Q Would you describe the items that were seized?

A Jumpsuit, my second blanket, linen. That's about it.

THE COURT: What was that last item?

THE WITNESS: Linen.

Q What was the condition of your room after it was searched?

A Dissheveled, things were strewn all over, every place, especially my legal papers. It took me a week to refile them.

Q Have you been advised recently by the MCC staff that there are going to be more searches?

A Yes, I have.

Q Would you describe the nature of that ad-

Q What are the problems with this particular typewriter?

A The "p," the key, the dingy on the top is broken, it's off. Also the ribbon is a disaster.

Q If you were permitted to have your own typewriter, would you have?

A Yes, I would. I would bring in my own Selectric II.

Q What effect would that have on your typing?

A It would increase it tenfold. It's very hard to type on a manual typewriter. It would be much more efficient.

Q Miss Braunig, have you had occasion to use the commissary in the Metropolitan Correctional Center?

A Yes, I have.

Q Have you always received what you requested from the commissary?

A No, I have not.

Q Could you describe the nature of the items that you have not received?

A Peanut butter, soap on occasion. They are constantly out of something. Half the time when you make an order I don't get most of what I

THE WITNESS: We were told.

THE COURT: No, wait just a second.

MR. YOUNG: Don't go on.

Q Miss Braunig, are beautician's services provided for the residents of 5 South?

A No, they are not.

Q Does anyone come in to like do the women's hair or provide any other services?

A No.

Q In the time that you have been there have you ever seen anybody come in to do that?

A No, I have not. There are hair dryers that were put in, standing, floor hair dryers.

Q What are the laundry facilities that are available to the women?

A There is one washing machine, one dryer, which is not an institutional model, it's like the kind you would have in your house. It's not strong enough. It breaks down constantly.

And we are supposed to receive full sets of linen and new jumpsuits once a week, and the only thing we are supposed to have to launder is our towels and our underwear. Unfortunately it does not work out that way so that the women have to do their

THE COURT: Okay.

MR. YOUNG: In terms of the letter, it is agreeable to our side.

MR. SCHAFFER: No objection.

THE COURT: I hear Mr. Corsi suggested we try and get in touch with the other two doctors. She will on Monday.

BY MR. YOUNG:

Q Miss Braunig, would you describe the uniform or uniforms that you have?

A I was given when I came in two very baggy jumpsuits. They are one-piece uniforms that zip up the middle. No matter how much you wash them you cannot get the wrinkles out. They say they are permanent press but the wrinkles are permanently pressed in. They didn't order enough small-size uniforms for the women and they are constantly --

MR. SCHAFFER: Objection.

MR. YOUNG: Withdraw that last answer.

Q Have you been able to obtain uniforms in your size?

A No, I was not able to obtain -- that is the request that was not answered.

Q You are referring to the cop-out that we previously introduced into evidence?

A Yes.

Q Could you describe the effect of being required to wear those uniforms has on you?

A Again, it is degrading, it is dehumanizing, depersonalizing. There is a feeling of losing your own identity when you can't dress in your own clothing.

I am normally a very conservative person. I would never dream of wearing a jumpsuit in my life. Especially for visiting. It is embarrassing. I is like walking out in a costume, a clown suit. It is very embarrassing to face people in a jumpsuit like twat. It is hard to concentrate even on attorney visits, embarrassing to me to have to face my lawyers dressed like that. I can't think very clearly when I am dressed that way. It is embarrassing.

Q Would you describe the shoes or footwear provided by the MCC?

A Okay. We are given used sneakers with no support, no arch in them. I refuse to accept them because they are unsanitary. I don't want athlete's foot. I wouldn't wear shoes like that that someone else had worn for a long period of time. We are permitted to have our own slippers that we can bs4 Braunig - direct

A I have never been in the kitchen downstairs. I have been told that.

Q We will withdraw that last part of the answer.

Just tell me --

A From my own personal knowledge, it comes up to me cooked and I reheat it in the microwave oven.

Q Before you were working on the kitchen staff, was your food always normal temperature at the temperature you would regard as normal?

A No, it was not.

Q Was it too hot, too cold?

A It was always too cold. It was never heated.

Q Miss Braunig, would you describe the temperature in the area of 5 South?

A It is either so hot you can't breathe, or it is so freezing cold, you have to walk around with sweaters and everything else on. Recently the temperature has been fairly reasonable, but the vents being unplugged has caused almost half the girls on the unit to come down in sick call. I am on tetracycline and Coricidin myself. I have been running a fever. My throat and nose were swollen. I have the ear infection because of the vents being unplugged.

MR. SCHAFFER: Objection.

THE COURT: Strike that medical opinion which I think is wrong by the way. My medical knowledge is different. You don't get colds from vents. But in any event, if you claim you do, you have to get a doctor to testify to that.

THE WITNESS: Half the floor is sick.

THE COURT: Let him argue the case. You are doing all right.

Q Miss Braunig, did the inmates in 5 South formally block up the vents?

A Yes, we did.

Q Have you at some point been required to remove that blockage?

A Last week J. R. Johnson instructed the officers to come into the room and pull out whatever we used to block the vents with.

Q Did the officers unblock the vents in the unit?

A Yes, they did over the objection of all the women on the floor.

Q Did you object?

A Yes, I did.

Q What has been the effect of unblocking those vents on the temperature?

Q Miss Braunig, have you ever had a furlough while at MCC?

A No.

Q Why not?

A I'd been designated close custody at the MCC. I was to have a furlough from Alderson. I've been out on prior trips from Alderson before, but the MCC has me designated close custody which precludes me from anything like that.

Q Is it your understanding that the people on close custody do not have a furlough?

A Yes, definitely. You must be community custody or minimum custody.

Q Does the Metropolitan Correctional Center have a central chappel?

A No, they do not.

Q Could you describe the religious services that are conducted on 5 South?

A They're held, there are only two sets of services. There are no Friday night services which is beyond my comprehension. I can't understand it.

There is a Catholic service and a Protestant bible talk session. There are no real Protestant services. The mass is held very quickly. It's like a 14-minute mass. It's a sham.

It's held in the television room because the priest who is basically a nice human being, the priest and the minister must go from side to side on each of the floors all up the floors. They don't have time to really deliver a sermon or to really relate or for there to be any kind of a religious experience.

I know that the chaplain at Alderson was the heart of the institution. If anything kept people together and kept them from cracking up, it was the ability to communicate with the staff there, the minister, the priest, the nuns.

The fact that there is no counseling through the churches effective at all in the institution for the five, six hundred people is beyond me.

MR. SCHAFFER: Objection, your Honor.

Could we have the answers responsive to the questions?

THE COURT: Yes.

Q Just talk about your personal experiences in 5 South.

Have you ever been permitted to get together with the residents of other units for religious services?

A No, I have not.

THE COURT: Okay.

Next.

Q How frequently do you see the -- you are Catholic, is that correct?

A No, I'm not.

Q What is your religion?

A I'm a Christian. Protestant.

Q How frequently have you seen a representative of the Protestant religion?

A Only for the brief time that he came. My own minister from Marble Church came to see me, but that has nothing to do with the institution.

Q I'm sorry. How frequently did you see the Protestant chaplain?

A Only for during that, that ten-minute bible talk session that he has on Sunday mornings and he, he only talks about death and dying and illness and it's very depressing.

THE COURT: Just answer the questions please so we can get finished.

Q Miss Braunig, just one last question on religious services:

What is the effect on you of not having a

Q Would you describe the process involved there?

A Sitting in the bull pens strips you of your ability to concentrate. I had terrible headaches from being locked up in the bull pens. I would sometimes spend three and a half, four hours in the bull pens during the day. That drains you of any kind of [illegible]rgy. Having to travel in chains and handcuffs through the lobby with people watching you was humiliating. The inability to bring legal papers, the searches going through with the legal papers are really terrible. And then being locked away during the lunch hours. It is just -- it just breaks any ability to communicate with your attorneys.

Q Would you describe -- starting in the morning, would you describe a typical day of which you had to come to a court proceeding?

A I would be picked up at 5:30, 6 o'clock in the morning even though court wouldn't start till 10 and I'd be brought downstairs and put in the bull pen and kept there. Then I would be taken over to court in handcuffs and --

Q Approximately what time?

A At approximately after everyone was already

Q Have you yourself sat in the bull pen for three or four hours?

A Yes, I have, past the dinner count and everything else. And a couple of occasions I lost certain legal visits because I was down there in the bull pen and they had come to see me, and they were told that I was still in court.

MR. SCHAFFER: Objection. All right. Sustained.

Q On the day that you were transferred out of the Metropolitan Correctional Center to be taken to Alderson, would you describe the process that day?

A I was awakened at 4 o'clock in the morning. For about three hours -- well, I packed everything. I sat downstairs in the bull pen. They put me through -- they went through all of my belongings, boxed up certain things that were going to be shipped to the storage company, went through all my legal papers, which took two hours. Then then when they put me -- dressed me in my own clothes and put me inthe bull pen until the marshals came for me.

Q When were you advised that you would be transferred out that day?

UNITED STATES OF AMERICA
ex rel. LOUIS WOLFISH,
et al.

vs.

UNITED STATES OF AMERICA,
EDWARD H. LEVI, etc.

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New York, March 5, 1977

1:00 p.m.

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Present:

Hon. Marvin F. Frankel, District Judge
Mr. Schaffer
Mr. Corsi
Mr. Young

(In the lobby of the Metropolitan Correctional Center.)

THE COURT: I think the record should now show that by agreement of the parties we have started our first visit. The time is 1 p.m.. We arrived in the lobby area. There seem to be about 60 people waiting to visit in the outer lobby. At the time we arrived there were about 25 more who were sitting around after having the initial interview at the desk, security screening. Five minutes after we arrived they were escorted to the elevator to go presumably to the floors where they are visiting.

The proposed itinerary of the visit was

outlined in the letter to the court from petitioner's counsel dated March 2, 1977. There was no objection to the suggestions contained in that letter so we pretty much plan to follow the course that Mr. Young proposed.

In case anybody ever wants to see it we will remember, when we are in the courtroom, to make this a letter or a copy of it a court exhibit so that there will be some indication of who is to blame for the trip.

The receptionist told petitioners' counsel that the group of 25 or so who were sitting here in the inner room when we arrived and shortly afterwards went up the elevator to make their visits were the third group of today's visitors.

I am informed, I guess without disagreement, the visiting hours today started at 12:30.

MR. CORSI: Your Honor, that was for the afternoon session.

THE COURT: For the afternoon visits.

(In the control room.)

THE COURT: The only thing I would like to suggest for the record is that the control room officer indicated there was visiting going on in the third-floor unit today, that she had brought people up.

MR. YOUNG: Is that scheduled visiting?

OFFICER BONIEL: Counselor Carbello and that unit, they run like what they call a cop-out sheet. You notice there was a separate elevator. They will not go up the same time other visitors are on. I will not bring them down, in other words, the visitor, the same time that I bring somebody else down because they could have a fight, obviously, protectuve custody.

MR. CORSI: I just wanted to note that there was some visiting on the third floor.

(In the lobby.)

THE COURT: Mr. Young, Mr. Schaffer wants to put on the record what he heard about the processing and if you later want to dispute it you can. But if it is not disputed we will take it as usable information.

Go ahead, Mr. Schaffer.

MR. SCHAFFER: Mr. R. Brown, the officer on duty in the lobby, has informed me that the processing for the afternoon visiting, which goes from 12:30 until 3:30, began at 11:30 after termination of the morning visit. That is to say, those people who had come early and were in the outer lobby at 11:30 were at that time begun to be processed and brought into the inner room to the extent that the inner lobby permitted such processing, that is, due to the limitations of space, so that the visiting hour, when it began at 12:30, there was a group of people ready to go up at that time.

Mr. Brown also informs me that to his knowledge knowledge that is the regular practice on weekends.

MR. YOUNG: Your Honor, I would like to note for the record that at this time I have just spoken to two visitors who have stated -- one stated that she arrived here at 11:30 and they are still waiting to be taken upstairs, the other said that she arrived here at a quarter after 12 and is still waiting to be taken upstairs.

THE COURT: It is now 1:30.

(Eleventh Floor South visiting room.)

MR. YOUNG: We spoke with an inmate who stated that his grandmother came to visit the other day --

THE COURT: We don't need that. He wasn't even under oath.

It is undisputed that each visitors' room, on this floor at least, and I will check on the others, has one bathroom that says "Visitors' use only," but it is locked, so that if any visitor really needs to use a bathroom he or she has to go downstairs to the main floor, be searched, and come back up if the visiting hour is not over.

MR. CORSI: Your Honor, as far as the locked bathroom, that is part of the stipulation.

THE COURT: Is that true on every visiting room?

MR. CORSI: Except for, I believe, the fifth floor, where on a trial basis the officer has the key.

MR. YOUNG: We have a problem with that because our fifth floor witness testified that to her knowledge that bathroom had never been unlocked, so I may withdraw my stipulation on it.

I would also like to note on the record that we were advised by the inmates of this unit that this Pepsi machine was put in here on Monday.

THE COURT: Do you want it taken out?

MR. YOUNG: No. We have been asking for it for a year, your Honor.

Also, I don't know if your Honor wants to take notice of the conduct of the visitors, some of them hugging and kissing, and others are sitting and talking. There are a certain number of children.

Also, I don't know if your Honor wants to state your own observations concerning the temperature.

THE COURT: It is a little on the hot side, I would say. I imagine the temperature is approaching 80, but I am not an expert on temperature.

The guard called our attention to the fact that one of the prisoners is being masturbated by a woman visiting him.

MR. YOUNG: He has stated that that occurs on other occasions.

(Eleventh floor North day room.)

MR. YOUNG: I would like to note for the record the outfits that are being worn, for example, this man's jumpsuit, is about a size 42.

What size waist do you have?

INMATE: I have a 30-inch waist.

MR. YOUNG: The tennis shoes, were those provided by the institution?

INMATE: Yes, I got them out of the back

room.

MR. YOUNG: You can notice that they have holes in them.

That is confirmed, to a greater or lesser extent, by the other uniforms.

THE COURT: I also notice a lot of the men are wearing miscellaneous other kinds of things. Is that going to be a subject of testimony?

MR. YOUNG: I believe that these are the sweat suits that they testified you can buy.

INMATE: We can't buy them here. We bring them from upstate. They haven't had them for six months.

INMATE: They did sell them at one time.

THE COURT: Then we will learn eventually that to some extent you can wear other clothes.

INMATE: If you can get it, you can wear it.

MR. YOUNG: That is all I wanted to note.

(Eleventh floor South.)

MR. YOUNG: First of all, note that we are in one of the dorm rooms. It contains double-decker beds. It contains a total of four tables. There are no chairs around the tables. There are some chairs scattered around. The chairs are in the visiting room at this time because visiting is going on for this unit.

Also note that there a dispersed through the unit lights with individual switches on the wall that control the individual lights, turning them on and off. There is also a series of lights in the center of the room

I believe that there has been testimony that when the inmates wanted to turn those lights on or off they unscrewed them.

I also note that here, again, you can hear, if you are quiet for a minute, the sound of air coming out of the vents.

There is a notice posted on the wall which I believe states that the beds have to be made by 8 o'clock. I think we introduced that into evidence.

THE COURT: At this moment I guess the record should show there is some evidence that the rule isn't being very vigorously enforced.

MR. YOUNG: Do the respondents stipulate that these tables accommodate four people?

MR. CORSI: It seems reasonable.

MR. YOUNG: I would note that there are

four tables in a dormitory that has beds for 20 people. That would be a total of 16 sitting spaces for 20 people.

THE COURT: There is another small table over there between two beds, a fifth sort of coffee table. I don't know how significant that is but I might as well add it on.

Mr. Corsi, do you have anything to add? I think the kitchen thing you had better make the subject of testimony. I asked a man who told me you are not allowed in the kitchen unless you are working there.

MR. YOUNG: One further thing I would like to note for the record is we have been advised that the chairs from the commons area, as well as the dormitories, have been taken into the visiting room, or at least some of the chairs have been taken into the visiting room, because visiting is being conducted there and we can observe certain of the inmates in the commons area sitting on the floor or standing or leaning against railings.

THE COURT: There are 120 people. Is that more than any other unit?

MR. CORSI: Yes, your Honor. When the MCC opened up in August of '75 there were 10 beds per dormitory unit for a total of 60 people on this unit.

THE COURT: So they were not dounle-decker when they opened?

MR. CORSI: That is correct, your Honor. In approximately the end of the year of 1975 bunk beds were installed in the dormitory unit to raise the capacity to 120.

THE COURT: The unit in terms of square or cubic feet is no larger than any other unit, I gather?

MR. CORSI: I believe that is correct, your Honor, but all the figures are in the stipulation.

THE COURT: The other units, where you have single-room occupancy, have a total of what -- 48?

MR. CORSI: Forty-eight. Except for the second floor, which is different. It is not a standardized unit. Again, I think that is all in the stipulation.

The honor unit is on the second floor, and then there is the hospital wing.

MR. YOUNG: A couple of things I would like to note for the record. First of all, what I pointed out to the judge earlier about one piece of athletic equipment not being operational, it is missing a handlebar.

Also, I would like to note that this balcony area that we are not standing in, which we have been advised is where classes are held, when they are held in this unit, is not physically isolated from the commons area of the unit so that sounds and conversations can travel up from the commons area into the area where people would be engaged in educational programs.

(On the roof.)

MR. YOUNG: I would like to note for the record that we are at the rooftop recreation area now. The rooftop area is surrounded by approximately 20-feet-high cement block walls. There is no way that anyone can view outside those walls from the recreational area.

In other words, there are no windows, no openings in the wall. Additionally, there is metal grating over the top of the entire rooftop area on one side.

THE COURT: There are some openings, but all you can see is a separate roof section.

I would also note that there is no provision for heating the rooftop area, in fact, since it is an open top it would be impossible to hear it.

MR. CORSI: All of which is part of the stipulation.

MR. SCHAFFER: In that connection I would like to note that contrary to Miss Braunig's testimony today the roof is not topped by barbed wire but on one side by normal chain-link fence material and on the other side by metal wire, which is somewhat further apart than normal chain-link fencing.

THE COURT: Anything else?

MR. CORSI: One last thing. There was an observation of the smell of marijuana on the roof by the group.

THE COURT: Okay.

- -

A Yes, I have.

Q Have you determined how many vents there are in each of the enclosures?

A Previously I was not aware, I did not believe there was a fan in the bathrooms but after the testimony in court, I went and I looked at the ceiling and there seems to be some sort of a vent but there is no air going through that I can tell because there is no sound, no fan. There doesn't seem to be any circulation. There is some sort of construction at the top of the ceiling.

Q Subsequent to your testimony on Saturday, had you ever had an opportunity to examine the phones that are posted for long distance?

A Yes. I do not remember there being 20-minute time slots for each phone call but I have not used them since I came back in January. When I was checking the board for the dates of the memorandums I noticed the phone list is separate at 20 minutes intervals but I believe the phone calls are sometimes limited to 10 minutes.

Q You gave some testimony on Saturday concerning custody status and specifically your custody status.

What is your status at this time?

MR. SCHAFFER: I would refer the Court to starting on page 632 at the bottom and continuing for several pages thereafter.

Q Miss Braunig, is there a choir or any sort of religious musical group at the Metropolitan Correctional Center?

A No, there is not, although I have tried to begin one. I've been stymied by the administration.

Q Would you describe your efforts to begin one?

A Yes. I first approached Farley Tolentino and asked him, since he seemed to be the most amenable, if he would mind if I sang during the mass, and he said all right and he suggested that I try to get a choir together.

I was stopped by the officer every time I would have four or five girls singing and told to be quiet, that we were making too much noise.

I wanted very much to have men's voices, to have quartette, you know, of music, and we were not allowed to meet with the men on that.

I have suggested in the Yoke Fellow meetings that we take the Yoke Fellows and try to start a choir with them. The administration stopped it because they did not want us meeting for that purpose.

I have suggested to Warden Taylor many times in my conversation when he has passed through the floors, that music is very important to me and I always sensed God through music and I thought it will be a very soothing thing for the people there, and no response was ever had.

In the Drama Workshop that I wanted to start, which I received no response to even after 120 days, I was told that music -- at that point I wanted a piano, and I was told that the music was not necessary for the Drama Workshop, and nothing more was brought back to me on the Drama Workshop.

Q Miss Braunig, are you permitted to use the piano that MCC possesses that you previously attested to that MCC has? Are you allowed to use that piano for religious services at all?

A No. The four officers have been told to refuse to unlock the doors for me to bring the instrument out.

MR. SCHAFFER: Objection.

Q What is your personal knowledge of this?

A On one occasion for the Christian Science services I went to the floor officer, Miss Cort or Cord, I'm not positive as to how she spells her name, and asked her to unlock the door so I could bring the piano waited was approximately five and a half hours.

Q And do you recall approximately when that was?

A Well, the first night I was there it took tha[illegible]ng. One or two other occasions, coming back from court when I was on trial, they were not able to get me up before the 7.30 count. I had to wait until the next count.

Q And were you advised by any member of the MCC staff as to why?

A Yes, because they did not have a woman to dress me out. That is the term they use.

Q Miss Braunig, have male guards ever entered your room while you were in it?

A Yes, they have.

Q Would you describe the conditions or the instances when that occurred?

A Yes. There was one such occasion which was very disturbing to me and which I tried to bring to write a BP-9 on.

Mr. Zebulin came in while I was preparing to get dressed for court and he --

Q Who is Mr. Zebulin?

A Mr. Zebulin is one of the male officers. He walked into my room on three separate occasions that morning while I was in a state of undress, and when I asked him to leave the room he laughed and told me to get dressed.

Q Have male guards or male staff members entered your room on other occasions?

A Constantly, yes.

Q And do they give you an opportunity to get dressed?

MR. SCHAFFER: Objection.

THE COURT: What is the ground of the objection?

MR. SCHAFFER: First of all, there is no foundation that she was undressed on those occasions. And, secondly, the question is leading.

THE COURT: Let me hear the last question and answer. Maybe I misunderstood it.

MR. YOUNG: My last question was whether male guards or staff members had entered her room on other occasions, and I'll ask her.

Q Were you always fully dressed those times?

THE COURT: All right.

A No, I was Not.

Q And did they enter the room -- withdraw that.

Did they give you an opportunity to get

Exhibit 97.

MR. SCHAFFER: No objection, if the witness will complete the foundation by saying to whom she submitted the request.

MR. YOUNG: I believe that testimony is already on the record.

Q But to whom did you submit this request?

A The proper procedure is that there are two manila envelopes were stapled to the bulletin board. One has blank forms and one is for the book request forms.

You pick up a blank form, fill it in and put it in the book envelope. It is supposedly picked up by those who work in the library and filled.

MR. YOUNG: I introduce these in evidence at this time.

MR. SCHAFFER: No objection.

(Petitioners' Exhibits 96 and 97 were received in evidence.)

Q Referring to Petitioners' Exhibit 96, Miss Braunig, what date did you place that in the envelope?

A The date on the top, which is the 27th of January.

Q Have you had occasion since then to see the original of this request?

A Yes, I have.

Q Would you describe that?

A Last night, as I was looking at the bulletin, taking down some dates from the memoranda, as per your request, I noticed that the pocket containing the book request forms was very thick and very full, and out of curiosity I opened the pocket and took out all the forms and I found my original form still sitting in there on March 7, 1977.

Q Miss Braunig, I show you at this time Petitioners' Exhibits 98 through 110 for identification and ask you if you can identify these documents.

A This is the same.

MR. YOUNG: We are withdrawing 104.

Your Honor, apparently we had an overzealous Xerox machine and we have some duplicates here.

Q Referring to Petitioners' Exhibits 98, 99, 100, 101, 102 and 103, can you identify those documents?

A Yes, I can.

Q And what are those Xerox copies of?

A Of more slips that I found last night in the book pocket, also dating from as far back as 1/27/77 it a fact that you have some tendency to exaggerate?

MR. YOUNG: Your Honor, I object.

THE COURT: I'll allow it.

MR. YOUNG: You will allow it?

A I would say at times I'm overly dramatic in the way I present things.

Q My question is, do you have a tendency to exaggerate?

A Upon occasion. Then I know several attorneys --

Q Have you exaggerated any of your testimony in this case?

A I remember stating at one point during the deposition, when we were in the middle of the discussion --

Q No. I'm talking about your testimony in this trial.

A In the courtroom? No, I have not.

Q Among the crimes that you were convicted of before Judge Pierce was the crime of perjury, is that correct?

A Yes, it was.

Q And that conviction related to your testimony before a grand jury that was investigating yourself and

Mr. Gardner, is that correct?

A That was in relation to the use of my stage name.

Q It was in connection with a grand jury proceeding investigating yourself and Mr. Gardner, is that correct?

A I believe so, yes.

Q By the way, Miss Braunig, what is your relationship with Mr. Gardner?

A Mr. Gardner and I have maintained a home for four years. I love him very deeply. He was my boss in the office. I was his secretary. He played the piano for me when I sang at night. We have a very strong emotional relationship. I have an enormous amount of respect for him and he for me.

Q Are you engaged to be married?

A As far as I'm concerned, yes.

Q What do you mean, as far as you are concerned?

A I consider myself to be engaged.

Q Is Mr. Gardner married to somebody else?

A Mr. Gardner is still legally married.

Q In the legal sense, would you say that you are engaged to be married to Mr. Gardner?

MR. YOUNG: Objection, your Honor. That calls for --

THE COURT: Sustained.

Q Miss Braunig, in order to, or in connection with obtaining privileges of writing to and making telephone calls to Mr. Gardner while you were incarcerated in Alderson and he was here at New York, did you not state in writing on a number of occasions that you were Mr. Gardner's fiancee?

A I did at Alderson and I consider myself as such.

Q But you didn't state in those memos that you considered yourself his fiancee; you stated you were his fiancee, did you not?

A Well, I am going --

Q The question calls for a yes or no answer, Miss Braunig.

A Yes, I did. I stated that he was my fiancee.

Q I see.

You stated that you and Mr. Gardner were co-defendants. Were you tried together?

A I was severed from his trial, but we were co-defendants.

Q And the reason you were severed from his trial is that you did not show up onthe day of trial, did you?

A That was outside of my control.

Q Yes or no, Miss Braunig?

A Yes.

Q And the reason you did not show up on the day of trial is that you had been arrested in Montreal on a check kiting scheme, is that correct?

A I don't know if you could call it a check kiting scheme as there is no provision in Canadian law for that term.

Q Is that in fact what you committed?

A No, as far as my knowledge of the situation.

Q I see. But you had been arrested in Montreal.

A Yes, I had.

Q And when you went up to Montreal were you out on bail?

A Yes, I was.

Q And in going to Montreal did you violate the terms of your bail?

A That I'm not certain of, as I only left for one afternoon and my attorney was aware of where I was.

Q But enough time to commit a crime in Montreal?

A Well, I had gone to Canada on three other occasions and been back that same afternoon in the courtroom in front of Judge Pierce.

Q And did Judge Pierce know that you had gone to Canada on those three other occasions?

A That I do not know. He is aware of it now, yes.

Q And before you were leaving for Canada on the occasion on which you were arrested, did you visit Mr. Gardner at the MCC?

A I visited Mr. Gardner consistently for a period of 10 months.

Q And in the course of those visits did you and he discuss the scheme that you then carried out in Montreal?

A At one point he did tell me to look in the desk drawer at home.

Q And in the desk drawer did you find detailed instructions for carrying out that scheme?

A You keep referring to it as a scheme. I simply pled guilty in Canada to signing a deposit slip.

Q Yes, I realize that's what you pled guilty, Miss Braunig. But I'm asking you whether contained in that desk drawer to which Mr. Gardner directed you after one of your visits with him were there detailed instructions for carrying out the activity which you then ultimately carried out and for which you were arrested?

A Yes.

Q When you visited with Mr. Gardner, did he ever pass you any notes in connection with this activity?

A No, he did not.

Q Did he ever say anything else to you except where to find the detailed instructions?

A (No response.)

MR. YOUNG: At this time I request the court to advise the witness that she does have a Fifth Amendment claim on the issues, if she wishes to assert it.

MR. SCHAFFER: She has already pled guilty to that offense, your Honor, and has served her sentence.

MR. YOUNG: Then you are agreeing -- I'm sorry.

THE COURT: Mr. Young, I will allow you to represent her for this purpose. But you do have a privilege against self-incrimination, whatever its limits may be, and if you think an answer to a question may be usable against you in some criminal proceeding or may tend to incriminate you, if you wish to you may plead that privilege.

THE WITNESS: I would like to be candid, your Honor. I just don't know at this point if the United States has any jurisdiction over a case that happened in Canada.

THE COURT: If you are not sure, as they might, that may be an occasion for you to please the privilege.

THE WITNESS: Then I must at this time respectfully request --

THE COURT: There is no question pending. Or is there one pending?

MR. SCHAFFER: I don't recall.

THE COURT: If there is, anyhow, I think I've heard enough about Montreal anyhow, Mr. Schaffer.

BY MR. SCHAFFER:

Q On a number of occasions, Miss Braunig, you referred to Mr. Gardner as your co-defendant. The trial of both you and Mr. Gardner has been concluded, has it not?

A The postconviction relief has not been.

Q I see. But both his appeal -- his appeal has been deciced and your appeal is currently pending, is that correct?

A Yes.

Q And were you represented by an attorney on your appeal?

A I was represented --

Q Just yes or no, please.

A Yes, I was. I have been --

Q That's all.

Now, did your attorney file a brief on your behalf?

A Are you talking about the appeal?

Q In the Court of Appeals.

A Yes, he did.

Q And do you know when that was filed?

A That was filed, I believe, on December 1, 1976.

Q And do you know when the case was arranged?

A Yes. January 24, 1977, and they reserved decision.

Q Miss Braunig, on Friday night, the night before you first testified in this case, did you meet with Mr. Gardner?

A I had a meeting with Mr. Young and Mr. Gardner to discuss the --

Q Just yes or no, please.

A -- harassment --

Q The question just calls for a yes or no.

A Yes. No, I did not meet alone with Mr. Gardner.

Q You met with Mr. Gardner and Mr. Young?

A Yes, I did.

Q And in the course of that meeting did you discusswhat Mr. Gardner's testimony had been in this case?

A I do not remember discussing at that meeting Mr. Gardner's testimony. What we discussed was the harassment issue.

Q I see. He didn't tell you at all what he had testified to in this case?

A I have not seen him very often, as he has testified.

MR. YOUNG: I object. I think this is protected by the attorney-client privilege, for one thing.

THE COURT: I don't think so. Not if Mr. Gardner was there. And, besides, since the witnesses are under the rule I would hope that the answer would be clear if you were there.

MR. YOUNG: Under the rule?

THE COURT: That is, the rule excluding other witnesses.

MR. YOUNG: Oh, yes.

THE COURT: So I'll overrule the objectoin.

A Mr. Gardner did not give me any specifics of any of his testimony, just vague generalities: that he discussed the mail situation, he discussed the visiting problems, that kind of thing.

Q And did you discuss with Mr. Gardner what your testimony was going to be?

A I had not had an opportunity to discuss with Mr. Gardner anything.

Q I'm talking about on Friday night?

A I did not discuss with Mr. Gardner. I spoke mainly with Mr. Young, with the exception of talking about the harassment issue and the visiting problem.

We mainly discussed the affidavits turned in by Mr. Rakopf and Mr. Carlson and Mr. Grevious and whoever.

Q Mr. Gardner didn't happen to mention to you that he had testified as to lack of peanut butter in the commissary?

A No, he did not.

Did he?

Q Miss Braunig, you are the one who is on the stand and you must testify without Mr. Young's assistance.

A No, he did not.

MR. YOUNG: Oh, your Honor, I object to that.

THE COURT: Why do you object?

MR. YOUNG: The implication that I am giving Miss Braunig any assistance.

THE COURT: There is no implication. She turned to you and asked you your advice on what she should say. That is not signifying that you did anything wrong.

MR. YOUNG: I would just like to note for the record that I was not giving her any advice, your Honor.

THE COURT: All right. You have noted it.

Let's have done with this. Look, I have made an order excluding witnesses, and I do expect, especially since I have ordered daily transcript, that to the extent it is within their power, counsel will enforce that order.

All right.

pm hps

Q Miss Braunig, during the period of your first incarceration at the New York MCC, how many times did you go to the roof recreation area?

A During the month of July and month of August I would say four or five times a week.

Q And thereafter?

A Thereafter not at all.

Q The last time you've been on the roof was August 1976?

A I believe so, yes. Excuse me, I went one time in the winter, one time before it was cold enough to put coats on, right before I left for Alderson in November. One time.

Q It was not cold that day?

A It was cold but I went without a jacket. It was not snowing.

Q You testified on direct examination that the roof recreation area is topped withbarbed wire. Would you describe where that barbed wire is found?

A Perhaps not barbed wire but there is wire. It's over on top of the -- there is a 12-foot brick wall and there is wire at the top.

Q Your testimony now is it is not barbed wire?

A I'm not certain whether it's barbed wire or not, but it gave me that feeling.

Q In other words, when you testified it was barbed wire, it was a slight exaggeration?

A Possibly.

Q You testified as to an instance when you were visited by an attorney named Mr. Marx.

A Yes.

Q Who else was present during that visit?

A I beg your pardon?

Q Who else was present during that visit? Was it just you and Mr. Marx?

A Well, I have testified as to several visits with Mr. Marx.

Q You testified as to one in which Mr. Marx was apparently disturbed by children running around.

A Yes.

Q Who else was present?

A Mr. Gardner was later brought downstairs, I believe, but for most of the visit it was Mr. Marx and myself.

Q On Friday night, did you and Mr. Gardner discuss the children running around?

A No, we did not discuss anything like that. We discussed mainly the harassment issue and the affidavits.

Q Can you state the names of any correctional officers at the MCC who did not permit you to bring legal papers into the visiting room on the occasion of an attorney's visit?

A Yes. Owficer Brown. There are two Browns. He is older with gray hair, black, tall, thin.

Q On what occasion did that occur?

A Several occasions.

Q Can you be more specific as to the time?

A Specifically on every single legal visit granted between Mr. Gardner and myself by the unit team he refused on the weekends to let us bring paper and pen in.

Q My question is legal papers.

A Yes. I'm talking about trial exhibits, and most of my visits with Mr. Marx.

Q What did those legal papers consist of?

A Exhibits of all different kinds:

Letters of credit , Xerox copies of -- I had five or six boxes of documents.

Q Did you bring those boxes with you to the meetings?

A At separate times different sets of papers, yes.

Q What was the quantity of papers you were carrying with you?

A I really cannot -- every time it was different. I would assume a handful. A couple of those manila legal folders.

Q A stack of paper two or three inches thick?

A Yes. Other times I would try to just bring a pad and paper in and I was refused that also.

Q Also by Officer Brown?

A By Officer Brown, by Officer Williams, by Officer Richardson. There were one or two others which I cannot think of their names at the moment.

I also remember there were two women officers in taking me downstairs to the third floor for legal visits that also refused to let me bring down legal papers, one of which even took the papers out of my hand put them back in my room.

Q They were returned to you?

A They were returned to me but I was not permitted to use them for the legal visit.

Q On any of these occasions did you make any effort to clear with your unit staff in avance that you were in fact carrying legal papers?

A Yes, a couple of times. They purposely stated I bring in --

Q You misunderstood my question.

Did you ever go to one of the members of the unit staff and say, "Here is a pile of papers which I wish to carry into my legal visit, let's sit down and look over them and --"

A I don't believe it would have been proper to show it to them. I don't believe they have a right to peruse them. They were aware of the fact I had boxes in my room, having gone through three or four room searches. They knew what was in my room.

Q On the occasions when various officers in the visiting room denied you permission to bring the legal papers, did you offer to show them the papers to satisfy them they were legal papers?

A They looked through them anyway. They looked for the blue backs and to see if it had the box heading on the top on some of them.

Q Were you ever denied permission to bring in documents that had blue backs or a caption on them?

A Yes.

Q By whom?

A By Officer Richardson, Officer Williams, Officer Brown and there were one or two other floor officers at times which denied it. Every time I brought in papers I would -- most of the time I would have blue backs with me anyway. On one occasion they even refused to let me bring in the indictment into the visiting room.

Q You testified on direct examination that in entering the lobby as a visitor, to visit an inmate, you were searched with a what is called a hand-frisker, which detects metal objects?

A Upon occasion, yes.

Q You stated that the officer kept the instrument over certain parts of your body for extended periods of time in a way that was embarrassing to you and made wisecracks. Who was that officer?

A I do not know his name. That was almost two years ago, a year and a half ago, but there were one or two specific officers I had a problem with. One was black, one was white.

Q You don't recall anything more about them?

A I have not seen them recently. They have not been floor officers.

Q In connection with your difficulties about bringing legal papers into the visiting room, did you ever complain to Judge Pierce about that?

A I believe Mr. Jacobs might have mentioned it to him. At one point Mr. Ellis might have. I don't remember all the pretrial arguments. I did bring it to the attorneys' attention.

Q You testified that --

A I did not try to bring legal papers in during social visits. Only during the legal visits.

Q You testified that on some occasions there were two officers at the reception desk in the lobhy and that on those occasions they were conversing about personal matters.

A Yes.

Q Can you state who those officers were?

A No, I cannot state by name. I do not remember at this point.

Q Can you tell me when this occurred?

A Yes, I can. I don't remember the exact dates when Mr. Gardner was there, he was moved around so many times in and out, but he spent most of the time at the MCC with the exception of Christmas '75. Most of the fall of 1975 -- excuse me, 1974 -- no, 1975. And -- let me get the years straight. I believe the MCC opened in the fall of '74. It was that first fall sentencing or the end of the trial.

Q The difficulty then was the number of people who want to use the phone?

A And lack of privacy and the fear the phones were being monitored, especially since they were in the process of investigating certain problems they were having with people placing phone calls. I really believe all of the phone calls were being taped.

Q But you have no personal knowledge of that, do you?

A Not specifically that I can prove, no.

Q You don't have any personal knowledge of that at all?

A All right, no.

Q Miss Braunig, if conjugal visits were allowed at the MCC, with whom do you propose to take them?

A Mr. Gardner.

Q Miss Braunig, you have testified you filed perhaps as many as 60 cop-outs during the time you have been at the MCC. Other than the cop-outs that have been introduced in evidence, do you have in your possession any others?

A No, because before I came back to the MCC I didn't believe it would be necessary to keep copies.

THE COURT: I am not going to wait while you hunt for it. Let's go on to something else.

BY MR. SCHAFFER:

Q In connection with the recreational equipment in your unit, Miss Braunig, you testified that there was a medicine ball that was too heavy to be lifted by the women. Did you ever attempt to lift that medicine ball?

A Yes, I did, once when I was vacuuming the carpet.

Q Did you succeed in lifting it?

A Not very well. It's not something I would play catch with.

Q Approximately how much would you estimate it weighs?

A I have no concept of height, weights. I am not very good in gauging distances.

Q How about dates?

A It would depend how deeply impressed I was by the events of that date.

Q In connection with your employment, Miss Braunig, you testified that you were assigned to unit kitchen and sanitation. On approximately how many

Do you have any envelopes or letters to show that?

A I gave Mr. Young several envelopes that were opened outside of my presence.

Q You mentioned a letter from Chief Judge Edelstein of this court that was dated February 18th and which you stated You received March 3rd. Was there a postmark on that envelope?

A No, there was no postmark on the envelope. But I would assume --

Q That's all, Miss Braunig.

A There was a stamp on the back of the envelope that made it appear that it had gone through some sort of stamping machine.

Q Do you have a copy of that envelope in your possession?

A I have given it to Mr. Young, I believe.

Q You stated that you placed a Rule 35 motion in the legal mailbox for delivery to Judge Pierce in connection with your criminal conviction and that it was still in the mailbox several days later.

A Two days later.

Q Two days later. How did you know it was still in the mailbox?

the bathroom?

A I was not permitted out of my room. I cannot testify as to what happened to the other women on the floor, but I heard several people complaining the next morning.

Q Just testify as to your personal knowledge.

A As to myself, no.

Q No one came and knocked on the door and asked whether you needed to use the bathroom?

A No.

Q Do you know who the officer on duty was that evening?

A Officer Richardson.

Q You testified that you were again deadlocked after a meeting with Associate Warden Johnson.

A We were deadlocked all morning.

Q Who deadlocked you on that second occasion?

A Officer Richardson and -- I believe Officer Richardson was on duty the next day also. Whoever was the floor officer the next day, as per the instructions of J. R. Johnson.

Q Was it Officer Richardson or somebody else?

A Richardson was there for the hearing. Whether he is the one who locked me in the room, I do because they stand up in it.

Q Would you agree that you are representing a carton approximately two feet by two feet by two feet?

A I couldn't begin to tell you. I have absolutely no depth perception.

THE COURT: Why don't counsel stipulate on that?

MR. YOUNG: We will stipulate that.

THE COURT: You think it is about two feet?

MR. YOUNG: Well, the measurements she was showing with her hands are about two feet.

THE COURT: Okay. Go ahead.

Q And did I understand correctly, Miss Braunig, that you testified that after one room search it took you a week to refile those papers?

A Yes. The contents of four separate boxes were strewn.

Now, I had --

Q Just answer the question.

A Yes, it took me approximately a week to refile everything. That envelope was taken --

Q Mr. Gardner had eight boxes in his room?

A I believe so.

Q Have you personally seen bugs in the candy get upset. And nobody has inferred that anything of the sort was shown. The only effort I heard was an effort to show that she learned from Mr. Gardner something of what he had testified about. And of course she did, because she said so.

Now, how specific it was is another question, and I've only issued a cautionary suggestion on that and you will all follow it, but I don't think it is worth dwelling on any further.

BY MR. YOUNG:

Q Miss Braunig, referring to Petitioners' Exhibit 65, this is a BP-9, in which you requested permission to have joint visits with Mr. Gardner, I show you that exhibit. It is a three-page, four-page document. I ask you to read what you wrote in that.

THE COURT: Mr. Young, I wanted to quit a quarter of. How much longer are you going to be?

MR. YOUNG: I didn't know the hour, your Honor. This is probably going to take approximately a half hour.

THE COURT: A half hour on redirect after all the direct that you had. Are you sure that's necessary?

him yet?

MR. YOUNG: Yes, he is.

THE COURT: If there is no objection, she may stay.

Is there any objection?

MR. SCHAFFER: No objection.

THE COURT: All right.

WILLIAM G. NAGEL, called as a witness by petitioners, being first duly sworn, testified as follows:

MR. MUSHLIN: Your Honor, my name is Michael Mushlin and I am one of the attorneys with the petitioners in this case. I don't think I've formally introduced myself.

THE COURT: I think we have met. But anyhow I'm glad to see you again.

MR. MUSHLIN: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. MUSHLIN:

Q Mr. Nagel, could you tell us what your occupation is?

A I am the executive vice president of the American Foundation, Inc. in Philadelphia, and director of its Institute of Corrections, which is one of the subdivisions of the foundation.

Q And what are your duties in that position?

A Well, first of all, I'm chief administrative officer for the whole foundation. But in addition to that I am director of the Institute of Corrections, which does studies in corrections around the country, which is involved currently in three or four correctional studies in different parts of the country. We have made at least two nationwide studies of correctional problems, both times for the United States Department of Justice.

I also serve on several committees and commissions dealing with correctional and criminal justice matters.

Q Could you describe for the court your training and experience, briefly, in the field of corrections?

A Well, I came into corrections after -- no. When I came out of the Army in 1946 I studied to come into correctons, but I went to the University of Pennsylvania and got a master's degree and then joined the New Jersey Department of Corrections in 1948 -- '49, and I worked within that department for many years, mostly as the assistant superintendent and deputy warden of one of the prisons in that system.

After that I served as a consultant on correctional matters for four years, after which I was appointed executive secretary for human services in the office of Governor Scranton and Governor Shafer in our State of Pennsylvania, and among the responsibilities I carried in that position were -- my concerns were the whole spectrum of human services, of which corrections and probation and parole was but one. But I carried the major responsibility for many aspects of the correctional program as a result of that assignment.

Then in 1969, I was asked by this foundation to be its director and vice president and I did.

Q Have you ever been associated with the governmental commissions concerned with the problems of corrections and pretrial detention in the United States?

A Many. I served as a consultant to the President's commission in 1966 and '67. I served as a member of the Task Force on Corrections of the 1972-73 Commission on Criminal Justice Standards and Goals, and actually I wrote the chapter of that report having to do with adult correctional institutions.

And I have served until this month as the vice chairman of the State Governor's Justice Commission, which is the agency in the State of Pennsylvania which disburses LEA moneys in our state. I resigned from that this month because of the pressure of work.

Q Who appointed the commission in 1972, the Commission on Criminal Justice?

A That was appointed by the then Attorney General of the United States. Gee, I forget his name. He got in trouble. I really did forget his name. I must be blocking on that. It was Mr. Nixon's first Attorney General

Q Have you ever lectured or taught on correctional matters?

A Yes. I have been an adjunct professor at Penn State. I gave a series of Guggenheim lectures at the law school in Yale, and I've lectured many other times in manh universities, and actually way back in my youth taught a course in criminology at Temple University while I was working at the prison in New Jersey.

Q Are you a member of any professional organizations in corrections?

A Yes. I am a member of the American Correctional Association, the National Council on Crime and Delinquency, the Pennsylvania Prison Society, and other organizations of that type.

Q Have you ever published any books or articles in the field?

A Yes. I published many articles over 25 years. Two articles are going to be published next month, one in the Journal of Crime and Delinquency and one in the Journal of Law and Psychiatry.

I also published a book in 1973 that was a result of a nationwide study of prison architecture that I did for the United States Department of Justice.

Q And is that book the The New Red Barn?

A The New Red Barn.

Q Have you everbeen qualified by any court as an expert in corrections?

A I have.

Q Which courts?

A Well, I've been qualified here in New York City, Federal Courts, in the Tombs case and the Queens case, the Rikers Island case.

I was qualified in, I think it is, the Northern District of Alabama on the statewide case dealing with correctional matters in that state a year and a half ago.

Last week I testified in a case brought by the United States Department of Justice Civil Rights Division in regard to the jails in Alabama, before the same court.

There may be some others.

Q Mr. Nagel, I would like to show you what has been marked for identification as Petitioners' Exhibit 115 and ask you if this is a copy of your curriculum vitae.

A Yes.

Q Is that an accurate summary of your training and experience?

A I think this one was probably written six or seven months ago and could have a few things added to it but I think it is pretty accurate.

MR. MUSHLIN: I offer this, your Honor.

MR. CORSI: No objection.

(Petitioners' Exhibit 115 was received in evidence.)

xx MR. MUSHLIN: Your Honor, at this time, based upon Mr. Nagel's training and experience, I ask that he be qualified to testify as an expert in the field of corrections.

MR. CORSI: No objection.

Q Mr. Nagel, have you ever visited the Metropolitan Correctional Center in New York City?

A I have.

Q On what occasions?

A Well, my first connection with it was before I visited it, when I talked with the architect about the plan, when it was still in the planning stage.

Then I visited it last summer, I think it was in June, and I came to New York yesterday and spent a few hours there again yesterday.

Q What areas of the prison did you see?

A Well, I'm going to start at the top and go down.

I was on the roof. I was on the 11th floor. There were two sides to the 11th floor. One was the dormitory and one was a room, a complex of rooms.

Then I was on the seventh floor, the fifth floor. I was in both the Pretrial Section -- the Pretrial Section on the fifth floor and the women's section on the fifth floor, both times.

I was in the Protective Custody Section down you have an opinion as to whether the 11th floor south dormitory area is an adequate area to accommodate that number of inmates.

A It is not.

MR. CORSI: What number are you referring to?

MR. MUSHLIN: 120, between 110 and 120.

THE WITNESS: It is not.

Q Could you explain why?

A Well, many reasons.

First of all, architecturally, the rooms were designed for nine. The design that was built in the room is very explicit, not only in the design itself but the lighting fixtures and the ventilation system and all the rest.

Second of all, it was designed so that with nine persons in there there was room to -- in each module I'm talking about, each pod, each individual dormitory, there are six of those. Each of them were designed so that there was space in the middle for writing and informal activities. That is all jammed to death.

There were 17 people in the room when I was there yesterday, plus myself, my associate who traveled with me, and you, and we were standing there like sardines.

The bathroom itself is only the size of what might be considered a normal sized bathroom in a private home. It is 9 by 10 feet, as I paced it off with my feet extraordinarily small for 20 people.

It had one urinal and one commode, one shower, and very little room. So that even if a person were using each of those facilities, that's about it, just in terms of square footage.

The inmates called to my attention, when I was there, the ventilation system, with air being blown out, the circulating air, which swept across the top of the room, which meant that individuals who were in the top bunk of the two-bunk things were -- all of these things I'm just saying to indicate that they were never designed for that many and fall far short of any standards that I know of as to the amount of square feet that should be available per inmate in a dormitory.

Generally speaking, the minimum I know of is about 59 square feet. I just this morning, coming down in the train, tried to figure out how many square feet there were per inmate in that dormitory and I came to 32 square feet, which is nor very much. It is about the size of a door, if that big.

So it just was not meant for, intended for, nor should it be used for that number of people.

The noise level rises when you have 20 people in a room meant for nine. The movement is that much increased. There are a series of obvious things that were very apparent to all of us and myself and my associate as we went through there.

Q I would like you to assume further, Mr. Nagel, that people may be assigned to that dormitory for periods of from several days up to several months and in certain cases even longer than four or five months.

Assuming that as well as the other assumptions, do you have an opinion as to the effect on the security of those individuals of housing that number of people in the 11th floor south dormitory?

A I have written, and I feel very strongly, that dormitories shouldn't be used for any length of time. And here the people that were there yesterday, I asked them, and the shortest one had been there two weeks and the longest one had been there eight months in that room.

That kind of a room was never designed for more than -- I can't conceive of it having been designed for more than 24 to 36, 48-hour usage, and my recollection was it was designed for that kind of purpose.

The kind of problems that creates in a custody man, and I was a custody man and custody is in my bones, is, first of all, you cannot bring 20 people under such close circumstances without having tensions and fights and disagreements.

If you can imagine 20 people having to spend such an inordinate amount of their time in about one-third of this courtroom, one-third of this courtroom, and living in there in such close proximity with each other day in and day out, tensions develop all the time.

As one person said to me one time, "We almost have a heavyweight championship fight in there all the time." and he wasn't joking; he was upset about the tensions that occur.

In addition to that, because the amount of officers available is no more than the number of officers that were available in the original design, where they were intending for supervision of 54, there is practically-- well, the communication between inmates and officers is that much reduced, and the tensions on officers are that much increased, and I think that's one of the reasons why I fot this absolute deluge of complaints about inability to communicate, to get things across, to get somebody to open the door when you had a toothache, and that sort of thing, because the officers just are running themselves wild taking care of three times the number of men or two and a half times the number of men that were intended.

There are kinds of problems that always occur in dormitories, and that's one of the reasons why I don't believe they should be made, and I don't think that the architect intended these to be used for that. When you put people together in such close proximity for such a long period under such abnormal circumstances, not only do you have fights but you have abnormal sexual behavior and you have all other kinds of tensions that make life almost unlivable.

(Continued on next page.)

Q Mr. Nagel, assume that the population in the dormitory was at capacity, not over capacity, but there were 54 people, and assumme the dormitory was as you observed yesterday at the MCC, who are here on writs, do you have an opinion as to the suitability as to dormitory quarters?

A I don't know of any warden who believes you should have dormitories, and I don't believe you should have dormitories. I don't think there should be dormitories in that particular building.

Q Could you explain why?

A Some of the reasons were those which I just explained. In this particular situation, the men who are in there now were men who have been brought back from penitentiaries all over this country. Some of them are serving relatively long sentences and some under extraordinary tensions because they are back on writs and expect new sentences on top of sentences. That, it seems to me, establishes those individuals as being persons who just have to be able to get away from people. They have to be able to retreat into a room and be alone, to be able to think, to be able to -- well, it was rather a touching thing.

I am not a particularly religious person but it was a rather touching thing because so many of the people who were in there were Muslims and they felt very strongly about their obligations to pray five times a day, and the embarrassment they felt in praying in that crowded dormitory and retreating into the bathroom and kneeling before a urinal or something like that while they do what they consider their obligation under their religious faith.

Well, these were some of the reasons. But more than that, the individuals who were felons, who had been considered necessary to have them in cells in penitentiaries all over the country, and then you brought them into a strange cluster of people and threw them 20 to a room and said, "Okay guys, go for yourself," and that's about what it was.

Really, it was a very surprising experience for me to find that in what was designed to be, I think, something of an ultimate correctional facility operated by the federal government. It was a great surprise to me.

Q Do you have an opinion one way or the other as to the importance of privacy in a correctional institution such as the MCC?

A Privacy is the one thing that a guy has to have or a woman has to have, it seems, above everything else. There is very little that he has left when he is in an institution. He has no clothes. The clothes he has are the monkey suits that I don't understand either. I just don't understand that. I'm sure he didn't have them in the penitentiary where he came from. I'm sure in the parts where they are presumed to be innocent you would expect them to be able to wear their own clothes during a period when tehy were awaiting trial and are presumed to be innocent.

That to me was sort of a negation of their individuality, humanity and privacy, that kind of monkey suit. Rooms sort of compensate in some small way for all the other elements of human deprivation that occurs in any prison or jail I know of in the country. This just magnified it.

You need rooms also, you know. You have to escape sometimes because you have to think. You have got lots of things on your mind when you are especially facing trial. Lots of things on your mind. And it is of no great pleasure to be thinking seriously about your whole future when some people might be acting like monkeys and kangaroos and everything else, because individuals are at kind of states of exuberance at different times. You have to have a place to retreat to, and there is no such place there.

Q Mr. Nagel, I would like you to assume that on occasion people in the MCC have been assigned as a sleeping area not a room or dormitory but rather a cot on the balcony unit you have observed, and on occasion people have spent from one night to several night using those facilities as sleeping accommodations.

Assuming that to be true, do you have an opinion as to whether or not those areas are suitable for housing people?

A I understand what had happened and I participated in it myself. We don't control who comes in the front door or how many beds we have and when they come in we have to have a place to put them. That's precisely, I suppose, what has been done there. But that doesn't necessarily justify having people sleeping on balconies where there are no toilets, no sinks, where there are really no accommodations whatsoever, where the whole thing was designed for totally other purposes. It shouldn't be. It is.

Q Mr. Nagel, you observed the modular housing unit in the MCC and I would like to ask you a series of questions about those.

I would like you to assume that there is no chapel, common chapel,or interior gymnasium or common law library or common general library or common classroom area at the MCC but that all activity at the MCC, except for visits and outdoor recreation takes place in the modular units that you observed under a design theory known as the functional living unit plan.

Assuming those facts to be true, do you have an opinion as to the suitability of this arrangement as a living program for persons housed at the Metropolitan Correctional Center?

A The accumulation of things that you have just spelled out are in my opinion the reason that the Metropolitan Correctional Center falls far short of its intention and purpose spelled out in the very first line of the direction to the architects by the Bureau. They were to design a place for persons who are presumed to be innocent. The various and sundry things you described all mitigate against being able to run that place as a place for people presumed to be innocent.

I know of no prison anywhere in the United

States where there is less movement, less movement of individuals than there is there.

This place was designed -- if I can just for a moment -- if there is anything I have done is study the architecture of jails as far back as the first ones in the United States. I have visited probably as many jails as most people in the United States, and including some which were built in 1817.

What I am saying is this: The people who designed jails designed them with three things in mind: control, to control with a minimum of personnel and in such a way that you are not going to get burnt for anybody getting out. That is security beyond control.

Well, over the years I have seen variations of designs in jails, from the oldest to the newest, that all inherently tried to do that and only that.

The other things that are required to make for human life where people are kept for any length of time are avoided in adherence to these three sacred things I have just described. Any book that has been written on jail construction, up to I think even my book, that's what they spelled out, what they told the architect to do.

What has happened in the Metropolitan one, they have essentially created in more pleasant environment precisely what has been done in every jail that I have been in for a long, long time. They make cell blocks from which an individual cannot move. You can call them modules or whatever you want. Essentially they are cell blocks from which individuals are not able to move for a long period of time.

Now, many of the jails have over the years, either because of the imagination of administrators or mandates of courts or whatever, relieved some of that lack of movement by building a gym somewhere, where a person could go to, have a library or some other common place where he can go to, a chapel where he can see movies, outside shows, or where they can put on their own shows or whatever. But they have done this to permit some kind of movement to get out of the tiny module and in such a way to enable people to move around, stretch their legs, to move from the limitations of that environment to another environment, all of which is necessary to keep your sanity for any length of period.

But this one has been built absolutely more restrictive of movement than any jail that I have been in, including those, as I say, which were built in 1817. It is built in such a way that there is really only one common space where anybody can go. That is, from his cell block at a particular time to the roof.

The director of research who took us through said the roof, because of the sides, the walls, it is cement walls, cement block walls, is oppressively hot in the summer. In the winter it is unbearably cold, and this is the first winter they have had. And in addition to the heat and the cold, it is necessary to go through five locked doors to go from your cell to the roof. The result is nobody even uses that common area, or it is not used much. I was there twice and nobody was there either time I was htere and I was there two different times of the day; that is, the times I was there were different times.

In other words,, I am saying they designed this place in such a way that people can't move anywhere. If that responds to the least restrictive concept I can't imagine what a more restrictive one would be. It is the most restrictive design of an institution that I have ever been in.

Q Do you have an opinion as to what the importance of movement is in a correctional center such as MCC?

A It is absolutely essential for all the reasons essential to anybody, to you, to me or anybody else. Most of our exercise is not in a gymnasium, with weights or something, most of it is just walking. Most of -- whenever we find tensions or whatever we get out and walk around the block, do something, work it off. You can't work it off there in any way, shape or form. And there is more tension there to be worked off than most of us experience in a lifetime.

The need for movement is just important to human beings and it is not provided in that place.

Q Do you have an opinion as to whether or not the functional living unit design we have been discussing would be characterized properly as minimum, medium or maximum security?

A The whole thing is maximum security. That institution is maximum security, period. Nothing else.

Their classification of reduced custody has to do with the kind of doors they have on the individual rooms. If they have a wooden door it is considered a medium and a prison lock a maximum.

The whole place is maximum security.

Q Do you have an opinion whether or not it is necessary to impose maximum security treatment on all residents of the Metropolitan Correctional Center?

A It's the easiest way to run a jail because the only thing you are really worried about is a guy escaping. If the guy escapes you think you are going to lose your job. But aside for that reason, there is no reason why everybody in that place should be held under maximum security. There is no reason that place should be run in such a way that you can't move to a gymnasium when you want to.

You might have one floor or two floors of that place where you have not yet figured the people out or you are not quite sure how much you can count on them or trust them that you don't allow them move except in a group situation, but for most of that institution that kind of absolute control is unnecessary.

Q You observed, did you not, the room of the common area, the exercise room of the gymnasium?

A Yes.

Q Do you have an opinion as to whether or not those rooms in each of the modular unit is suitable for indoor gymnasium space?

A I saw a sign "Gym is open" and I thought it was maybe a joke of the week or his idea of making light what is not a light situation, and we find sometimes a relief in that kind of rumor. Those rooms certainly don't serve in any way to enable persons to engage in any kind of real physical activity that would give them a release and a break.

It seems to me, as far as men are concerned anyhow, there is a whole series of things between exercise and sublimation of sexual energy and you can't do it. You don't have the sexual outlet and the exercise outlet or the emotional outlet. The emotional buildups in that place must be terrific.

Q Do you have an opinion of whether or not the use of the roof plus the use of the exercise room that you saw in the modular unit constitutes adequate recreational facilities that are suitable for the population in the Metropolitan Correctional Center?

A It would seem to me at a very minimum, very minimum, that place requires a covered gymnasium, a gymnasium that is an all-year-around place, that plus the yard, is an enormous relaxation of the key syndrome I told you about because if you have to wait three, four, five minutes to get through every one of the five locked doors, you are not going to use the recreation place spontaneously. Sometimes spontaneity is what you need in recreation.

Q Do you have an opinion as to whether or not it is appropriate to construct a facility such as the MCC without a chapel or law library, common law library, and general --

A I can't understand why it wasn't done. I do understand.

I think the intention was when they built the place they felt nobody was going to be held there more than 30 to 60 days or some such thing as that, and they felt they could skimp on the money on the ground they could move people in and out very quickly. That apparently was a vain hope. Those other things that you mentioned are much more important.

A law library, I just don't know how you can use one when you have a book brought to you. Inever know where to look through things, and I adequate for a person who has not been tried. I rather feel that during that period of time there should be almost -- he should have almost limitless opportunity to visit with the relatives, friends, sweethearts and wives.

As far as the individuals who are there serving sentences, I have no very strong objection to reducing the amount of visits to some realities based around space and staff. But, I would certainly tend to have a more liberal one for convicted persons. The writ people would pretty much fall in the same category because they are convicted.

Generally speaking, this is a big city, and people who are in the Metropolitan Correctional Center generally come from the city or the immediate environment so it is relatively easy to get here and so you should expect rather a large number of visits.

I know from discussion with the architect, he never dreamed that the visiting would develop as much as it has, but it has, and I think there are adjustments that can be made. The fact is, each one of the visiting rooms I rhink are only open about one hour out of every six a day. I figured it out somewhere along the line and that's about what it came to, it seems to me.

coming in and visiting who might have particularly little children.

Of all the securities and all the electronic and scientific methods they have to make sure nobody gets out, including the dyes on the hands I had, there is no need of that perpetuation of a denial of sanitary facilities, but that's the way institutions are run. That's just one of the observations I couldn't help but feel about that visiting room which I was in yesterday.

Q I would like you toassume that in a number of the visiting rooms there are no vending machines, nor is food allowed to be brought in by family members or by residents of the MCC.

Also assume that in certain of the visiting areas there is no water fountain. Do you have an opinion as to the effect of that?

A I suppose there is nothing more normal than to share food together with friends and whoever. Well, I can understand and I certainly have been a part of a denial of bringing food in and so forth, and you don't know what's coming in, and the business of contraband control is enormous but there is no business of contraband control of having a sandwich vending machine or all the kinds of vending machines that are available today, and it seems to me there is no reason why individuals who come together, come distances together, come sometimes during mealtimes, for example, should not be able to enjoy food together. I did notice the vending machines were on one floor, I think the fifth floor there, and people were using them. I don't know why they are not on the others.

Q I would like you to assume that after each visit an inmate at the MCC is brought into a room connecting the visiting room with the modular unit and is there asked to remove all his clothing where he is searched by a prison guard. The search requires the inmate to expose his mouth and turn over and spread his rectum for visual inspection by the guard.

Do you have an opinion as to whether or not -- those searches I would like you to assume are conducted as a matter of routine after each visit.

Do you have an opinion whether or not such searches are necessaary?

A This is another one of Correction's undying traditions. In all the years that I have been in the prison business, I have never yet heard of any contraband being found inthe anus of any prisoner and yet day after day after day they reduce prisoners to that indignity.

How one could even hope to inject any such thing into such crevices when he is wearing those monkey suits is beyond my comprehension. It's a residual thing, and has been aroun every since I can remember.

I have asked dozens of Wardens, have you ever found anything?

No, never found anything.

Why do you do it?

We have been doing it for years. And, that's it.

I believe with the electronic equipment we have now -- the only thing you have to worry about in terms of introduction of contraband into an institution is narcotics, and money. The electronic equipment or the airport-type equipment we have at the front door can, if done with any kind of vigilance, will avoid the other introduction, weapons and saw blades and that sort of thing. So we have to worry a little bit about narcotics and such-and-such.

But, I think the kind of indignities I have just described to prevent the introduction of, say, narcotics into the place, and they can come in a variety of ways if they are brought in at all, just doesn't justify continuously reducing a human being to a less than human quality.

Q Do you recall how many people were present in the visiting room having visits yesterday when you were there?

A I sat on the fifth floor yesterday. The last time I was on some other floors. The fifth floor on the women's side there were couples, not crowded at all. On the men's side there were 26 people. That counted me and my associate. Obviously there were 24 people engaged in the visiting. It was very crowded in there during that period.

Q Do you have an opinion whether or not the room is adequate for that amount of people?

A 24 would be an absolute maximum and it could be reduced I say if they increased the hours of visiting. You didn't have much sense of privacy. You were almost on top of everybody.

Q Generally, could you describe what the importance of visiting is for a population such as that at the MCC?

A It's the one thing that keep them normal. It's the one thing that keeps them related to a real world. It's the one thing which is the sum and substance of what they live for.

of the MCC. Having observed those observed, I would like to ask you whsher you have an opinion as to the suitability of the modular areas for a regular program of such visits.

A I have to think that through a little bit. I felt as if there is anything good about them was the fact there were privacies in the room, no bar fronts or grill fronts and everybody had an outside cell and there were a lot of things about it that would make for privacy in visits. I think if they really developed a classification system in that place, where individuals who would abuse the contact visiting in the place or who might in some way or another be a threat to somebody else's visitor or something, were placed on the eleventh floor or something of that sort, I think you would that throughout the rest of the institution that visiting within the unit would happen with a remarkable lack of problems because inmates themselves wouldn't allow the problems to happen, something they consider sacred as that. That's one thing you can be sure of.

Q Do you have an opinion of what the effect of such visits would be on the population?

A I would say privacy in the room. One of the things about privacy in the room is that you're not

A From 1949 to 1960.

Q What institution was that?

A Bordentown.

Q What type of institution is that?

A It is sn institution for the most difficult youthful offenders, 18 to 30 years old. In new Jersey we hav[illegible]uth complex with three youth institutions plus ju[illegible]le institutions plus three adult institutions.

Bordentown is in the youth complex, it was when I was there.

By law no one can be admitted there under 16. NO one can be admitted there after he was 30. However, we had to receive the most difficult of the youthful offenders which are, by the way, the most difficult offenders there are because the other two institutions receive the other offenders.

Q Is it true that that institution only is a sentence institution, not a jail?

A That's right.

Q Have you ever run a jail?

A I nefer ran a jail.

A Well, when you are close to the business of running prisons, you feel an enormous responsibility and loyalty and obligation to the traditions of the service, if you will.

I retained such a loyalty to the traditions of the service until I became executive secretary for human services in Mr. Scranton and Mr. Shafer's administrations, and then had to look at things from another point of view. And during that second look I felt that one's responsibility had to be beyond those of the bureaucracy, and that's what I meant by an "unfettered correctional person."

Q Do your views on correctional matters comport with the weight of correctional experts in the field?

A Well, that is a little hard to know. Mr. Carlson himself said to me he wishes he could say thie things I say but he can't. He said that to me many times.

Q When was the last time Mr. Carlson said that?

A He said it to me the last time when we were flying in a two-man plane from Urbana, Illinois to Chicago, when we were -- after we had -- we had both ment per se? Isn't that the central thesis of your book?

"A I don't know if that's the central thesis of my book, but I would have to admit, after working inside institutions for 11 years, I'm not a great lover of it."

A That's not in contradiction to anything I've just said that, and I would say it today.

Q Mr. Nagel, I believe in your direct testimony you indicated that in addition to visiting MCC you had occasion to discuss the design of that institution with the architects, is that correct?

A Yes.

Q When did you have those discussions with the architect?

A Back in maybe '72 or '[illegible] There was a symposium on correctional architecture that I was the speaker in, and Mr. Gruzen and Mr. Silver were also on the program.

Q Mr. Gruzen and Mr. Silver being whom?

A They are both members of the architectural firm. It was Gruzen who designed that building, and they presented their whole concept of the thing together with slides and mock-ups. And as architects do, they are extremely visual people and they produced it.

We discussed some of the ideas about it and that was it.

Q And the presentation that they made to you --

A It was not just to me, by the way. It was a group of speakers.

Q Was that pretty much the design and so forth that was actually constructed, that was used in the construction?

A I think that -- the fundamental parts of it were there. The idea was the functional units, the modular concept, visiting on each floor.

Q The high-rise concept?

A The high-rise thing. They were all part of it.

Q And when you saw that presentation, what did you say? What was your reaction to it?

A Well, I don't remember. I can't say what I said, because, as I stated, it was '72 and '3, other than to say that I am sure I had some negative criticisms. But I wouldn't want to recall what they were because it was a long time ago and I've had a thousand such discussions since then.

Q Well, try and recall, if you can.

A I probably said, "Why the lack of movement?" I'm just saying I probably said, "Why the lack of movement?"

Q Anything else?

A I probably would say, "Why the dormitories?"

Q Was that presentation before or after your book The New Red Barn came out?

A Approximately the same time, plus or minus. The book had probably been written already, but it was six months between the completion of the writing and the actual release for sale.

Q After the discussions in '72 or '73, did you have any other discussions with Gruzen or a member of that architectural firm?

A Yes, I did.

Q When was that?

A Probably in the last six months.

Q I'm sorry?

A Probably within the last six months.

Q And what was the nature of the conversations you had at that time?

A Well, for the last several months I had been

Q Have you testified in the Tombs case that in fact you have argued with the architects and with the Bureau of Prisons that the design of MCC was in defiance of the least restrictive alternative?

A I'm sure I probably said that to Gary Motes -- he is from the Federal Bureau of Prisons -- who is an architect and who is director of planning for that, and I'm sure that I have said that to him some time along the line, and I suspect I have said it too to Mr. Silver, but I wouldn't want to swear by that, and this is under oath.

Q I would like to read a short passage from your book. First, before I do that, in the design of MCC, in your professional opinion would you say that the architects, and ultimately the Bureau of Prisons, since that's the entity that commissioned it, were attempting to hold and validate human values, values which heretofore had not been considered in designing and constructing prisons?

A Well, not quite. I would say that they were trying to do all those things you said that had not been done before in institutions for the pre-tried. I think I can say that -- by the way, the Gruzen firm have designed some other prisons that were leaps forward over what had existed before, and you will find in my book many glowing comments about it, at least one of them that the Gruzen firm made.

Q Leesburg, is that?

A Leesburg.

Q Would you say that MCC was a leap forward from what the state of the art was in '71 or '72, at the tiem your book was coming out?

A It was in 70 per cent of the cases. It took out the cage syndrome, it broke the larger cell blocks down into small modules. It had outside rooms rather than inside rooms. These were all steps forward.

The place where they didn't make steps forward, because it existed in other places, was the provisions for movement, the provisions for recreation, visits for congregation, to meet and the like.
Other instituiotns already had them and they decided not to go with them.

Q I would like to read a passage from your book at pages 29 and 30. This is The New Red Barn.

"There are some people who are aware of the impact of the cages now being built to hold innocent pretrial detainees. They are seeking to design facilities which are much less dehumanizing and allow for face-to-face inmate-staff relations. One of the centers being designed, though it is secure, houses detainees in small groups and in individual cells where some privacy is afforded. Ample space is provided for inmate activities and these spaces are organized to allow for maximum use by inmates."

What institution or center were you referring to there?

A I don't know.

Q Would it be fair to say that you were referring to MCC?

A It may have been this one, because I saw this one and I saw the designs for the other MCC in Chicago at approximately the same time. So it was probably one of those two?

Q Do you recall giving an interview or talking with someone from Building Design and Construction, a magazine, about prison design?

A No, I don't. But I may have. And the name of that journal doesn't mean anything to me. But after our book was out we were getting phone calls from architectural magazines all over and building magazines all over. So --

Q Do you recall reading an article entitled, in that magazine, "Humane Prisons Replace Cell Block Architecture"?

A No, I don't remember reading that. I may have read it, though.

Q You have given interviews to magazines and so forth, publications?

A Yes. People are calling me on the phone all the time. Sometimes they come down to my office.

Q I would like to quote from that article, if I may, and ask you if this quote is in conformity with your views:

> "Even such critics as William Nagel, Director of the American Foundation's Institute of Corrections, finds much to be lauded in the new designs."

We are referring now here to the new designs of MCC.

> "As you know, I am violently opposed to the jail or bail syndrome and believe there should be a moratorium placed on all new jail construction,"

said the white-haired prison hater.

> "But I have to reluctantly say that the plans for the MCCs I've reviewed are greatly improved

over any others. Of the hundreds of prisons I've seen, I would certainly prefer being seng to one of the new MCCs over, say, the new Orange County prison in California or Chicago's Cook County."

A That's true. I would.

By the way, the term "prison hater" was his, not mine. That was his term. And the very things I have just enumerated for you, the outside rooms, the windows, all those things are reasons.

Some of those other places you describe, the Orange County jail, brand new, there is no view, there is -- the outside wall has no windows in it.

THE COURT: Mr. Nagel, let me say that we are going to have to stop at 4.30 this afternoon. I was hoping yo ur testimony would be through by then. Perhaps, if you could answer more briefly, we will make it. Okay?

Go ahead.

Q Mr. Nagel, are you in any associated with the National Clearing House?

A No.

Q Have you served on any of their advisory committees?

A I was on their original advisory committee when it was created. I served on it for maybe three years.

Q When did you serve on that?

A Well, I don't know exactly when it was started. But I think it was probably started in '72 or thereabouts, and it was created by LEAA, who appointed seven people ot be a part of their advisory committee, and I was one of them.

Q Would you agree with the following statement that also appeared in that article that I just read from:

> "The National Clearing House for Criminal Justice Planning and Architecture, headquartered in Champlain, Illinois, also sees much merit in the MCCs: 'When people come to us asking to see something positive in prison architecture, we often recommend they look over the MCCs,' say Clearing House spokesmen."

Would you agree with that?

A Yes. I would do the same thing. And I would also tell them, you know, to look at some other things too.

Q Mr. Nagel, when you visited the MCC in June, how long were you there?

A I don't know. I would guess at that particular time probably two, three hours.

Q And then, when you visited yesterday, how long were you there?

A Well, yesterday -- I don't know when I checked in, but it was a little bit after four, and I caught the eight o'clock plane back, so it was probably three and a half hours, three hours.

Q When do you think you left the MCC?

A I didn't look at my watch. Seven-thirty? Seven o'clock, maybe.

Q When you spoke with inmates up on the 11th floor, which dormitory did you go into? Did you go into aol of the dormitories?

A No. When I first arrived, I might say that all the dormitories were locked. It was five o'clock or thereabouts and everything was locked. And I went into the day room.

At that particular time they opened the doors to the dormitories and people swarmed out into the day room and I walked down the first ramp right alongside of me, I don't know which one it was, and spent most of my time in that one, because as soon as I walked in there the inmates who had swarmed out turned around and followed me in, like the Pied Piper, and I sat down and we talked.

My recollection was, if you must precisely know which one it is, it seems to me that it was the one immediately to the left of the balcony area. That would be my recollection of it.

Q And how did you choose that one? At random?

A I was standing nearest that one when the door opened, and it was either -- I went into that one.

Q And who accompanied you when you went in the unit?

A My associate Miss Smith, and Mr. Mushlin, who is the attorney, and another attorney, Clay Hiles.

Q You indicated that you also talked with staff on the two occasions that you visited MCC. How did you find the staff?

A Good.

Q And the way they related with inmates?

A Well, I don't know that yesterday I observed that particularly. I don't recall any particular indications of how the staff related to inmates yesterday.

I think, though, that I have a general impression that they are a pretty good staff. That is sort of a general feeling I have.

Q Responsive, responsible people?

A Well, they were certainly responsive to me and they were not hiding things. You know, when I asked questions, they answered questions. They didn't seem to be defensive or whatever. And that was true of -- particularly true of, I think it was, an Assistant Superintendent, who took us around the first time. Who he was, I forget. But he was extraordinarily willing, you know, when I said, "How is this working?" or whatever, to talk to me.

Yesterday, the man who took us around happened to be a research type fellow. He was very responsive, too.

Q When you went and spoke with the inmates in the dormitory unit, did they know the purpose of your visit?

A Not at first. When I walked in there, in fact when they started following me back, there were a couple of sort of snide remarks, "The zoo again," or something like that, you know. And then a large, black prisoner said to me -- I went in first. I was the first one in. He asked me what I was there for, and Mr. Mushlin answered and said it was a part of the class action suit.

That's, I think, when everybody turned around and followed me back in again.

Q And then you were identified at that point as being connected with the plaintiffs in this case?

A I guess so. I don't know whether anybody told them, unless they identified Mr. Mushlin as being with the plaintiffs.

Q Mr. Nagel, do you know how long the inmates are actually locked in to the dormitory unit?

A Well, I only know what they told me.

Q What did they tell you?

A My recollection was it was something like 10 hours a day.

Q 10 hours a day?

A Yes. They were giving me figures that were so much -- that they are locked in at night time, of course, and then I started knocking off counts that they have that they are locked in, and I think that my recollection was I said, "Well, how many hours is that a day?" and somebody said, "10."

But this is what somebody said. I didn't ask any staff person about it.

Q You indicated that in your view those rooms are now cluttered because of the overpopulation. Is that correct?

A I don't know whether I used the word "cluttered." But if that is synonymous with "crowded," I would say yes, they are cluttered.

Q Do you know if any more floor space has been taken up by furniture or bunks since they have increased the capacity?

A Yes. I do know there has been.

Q There has been an increase in --

A -- floor space taken up.

Q By furniture?

A By furniture.

Q In what respect?

A Well, originally there were nine single beds. Now there are 10 double deckers, that is one addition.

Previously there was one little cabinet per bed. Now there are two cabinets per bed.

Originally there were three tables, round tables down the middle. Now, if my recollection is right, there were five round tables.

Plus there were originally nine chairs. Now there are 20 chairs, all of which take up floor space.

Q Have you done any calculations as to what the square footage works out per inmate, just in that dormitory?

60 or 65 foot per person, and considering that that was intended for 56 people or something like that, and it now has 120 people using that common space, you can assume that it was 60 foot per person, divide that by a little less than half and you'll end up with something like 30 foot per person, too.

Q I think you did testify that there is a standard that is generally accepted as to square footage in dormitory settings, is that correct?

A The smallest one I saw was 60 square foot per person.

Q But that is an accepted standard?

A It was the standard that was established, if my recollection is right, by Judge Frank Johnson in the Alabama case.

Q So then it is a recent standard and it has been accepted by a court, is that correct?

A Yes. And I think it is also very close to the standard that is included in the -- the National Sheriffs Association have a book of standards for jails, and that's the one that I referred to. They say there should be no dormitories but that there should be an addition to the bedroom, with 70 foot, they say, 60 foot per person of day room space. That's what the National

Sheriffs Association --

Q Your understanding of the standard is that it is, then, 35 feet of bed space plus approximately 70 feet of common space?

A No.

Q I'm sorry. What is your understanding of it?

A The National Sheriffs Association standard?

Q Yes.

A They said there should be 60 foot of day room space plus a room. Their minimum standard for a room is 70 foot. So that makes it 130 foot per person.

Q The standard that you talked about before of Judge Johnson, when he indicated 60 square feet, does that include sleeping space as well as common space?

A He said that every man would have no less than 60 square foot. I wrote that down, by the way.

Q And that was in a dormitory setting?

A Yes. They had dormitories down there. I have it written down somewhere.

Yes. He just says there will be 60 square foot of living space per inmate. Understand, that was coming up from 32 square foot. It was a big jump in Alabama.

Q But in Judge Johnson's view the Constitution required 60 square feet.

MR. MUSHLIN: That is really a question of law, your Honor. I mean, Judge Johnson wrote an opinion. It is reported.

MR. CORSI: Your Honor, I am trying to inquire as to Mr. Nagel's understaning of current standards.

THE COURT: Well, I don't think he is going to be an expert on constitutional standards. That's what you are supposed to be an expert on.

Why don't you go ahead.

Q Mr. Nagel, speaking about stanards, is there one generally accepted standard or are there in fact a number of standards?

A Oh, there are a number of them. There is no generally accepted one.

Q And does that cover the whole range of correctional practices?

A The whole range. There are some that are more accepted than others, probably because of the prestige of the organization that runs it.

Q But is it fair to say that there are differences of opinion among experts concerning what is required for appropriate correctional activity?

A Yes.

Q Or jail activity, detention activity?

A Yes.

Q You indicated that in going through the dormitory you found that it was unacceptable the way it was because of the placement of vents in the dormitories.

Did you identify where those vents were placed and how they were placed in respect to the beds, the arrangement of furniture?

A Yes.

Q And were any vents blowing directly on a bed?

A It was blowing right down the foot of the bed.

Q Down the foot of the bed but not directly on the bed?

A Well, I don't think -- where I stood, I was at the foot of the bed and put my hand up.

Q If I were lying in the top bunk, would air be blowing directly over me?

A I couldn't say. I wasn't lying on the top bunk.

Q Did you put your hand up by the vent?

A I put my hand up by the vent.

Q And at the time you put your hand by the vent, was your hand over the surface of the bed or was it --

A It was at the foot of the bed.

Q Beyond the end of the bed, is that correct?

A Well, I don't know whether it was beyond the end of the bed or not. There was the bed there, and I had my hand up like that (indicating). I was not on the bed, so my arm was about parallel to the bed, perpendicular to the bed, straight up from the bed.

Q But in any instance did you see or did you feel air blowing directly across the surface area of the bed?

A I said that I did not, a few moments ago.

Q Mr. Nagel, at Bordentown, and I believe that's where you were, were there any dormitories there?

A Yes.

Q Do they still have dormitories?

A Yes.

Q Yes?

A Yes.

Q When you were the Assistant Superintendent, did you make any efforts to convert those dormitories into private rooms, individual rooms?

A I made my protest.

Q Are there dormitories in other detention facilities?

A Yes.

Q And approximately what percentage of the detention facilities that you are familiar with have dormitories?

A Maybe 20, 30 percent.

Q And would that be of even some of the new detention facilities that have been built either about the time of your book or subsequent to the writing of your book?

A Some of them don't call them dormitories. But there are six-man squad rooms. However, they are built in such a way that they can't be any bigger than six-man squad rooms. You can't stick another six people in there.

Q How large were the dormitories of Bordentown?

A Ours were awfully large. They were dormitories that handled 60 people.

Q Did you ever have occasion to increase the -- was that the design or the designated capacity of those?

A No.

Q What was the design or designated capacity?

A One of them was originally designed to be a hospital. I don't know what the design of that was. We built a new wing and a new hospital, and when we built the new wing and the new hospital the former area that had been used for medical purposes was converted into a housing unit.

I would guess that if I were going to put a capacity in it I would say that I would not have wanted more than 40. We had as many as 60 and 65 in them.

Q Why was it that you had 60 or 65?

A Because we didn't control intake, just like I said in the direct.

Q And in your experience, has that occurred in other facilities where they have increased --

A Generally speaking, that is one of the real sad parts about dormitories. It is the one part where you can squeeze more people into. The cells, generally speaking -- to put another person in a typical sized cell is almost physically impossible, and so they don't do it. And, in fact, many courts have said they can't do it. And so what they do is squeeze the extra people into the dormitories.

THE COURT: Mr. Corsi, we are going to have to stop, I think. We will resume at 10 a.m.

(An adjournment was taken to Thursday, March 10, 1977, at 10 a.m.)

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the question whether there is anything we have to do now. I am not sure I cut you off, Mr. Young, but I did invite you to specify and I guess I invited you rather abruptly what things I have to turn aside and consider now. I think in a rather curt atmosphere of the question, you didn't give me a full account.

I have overnight looked at the papers and I see very little that I really need to consider now in the fashion of protecting the Court's process against abuse or alleged abuse by any party.

I am substantially prepared on the papers to deny Mr. Gardner's complaint. Even accepting all the things he says and the things he surmises, it is now shown without dispute that the person he assertedly was afraid of at Danbury is not there. I don't see much need to worry about that. There is no question that he has, whether inadvertently or not, has misled the Court on occasion and that doesn't help his position with me.

MR. YOUNG: Your Honor, we are preparing an affidavit on that. I believe Mr. Rakoff's affidavit is substantially inaccurate as to Mr. Gardner misleading the Court on Allenwood.

THE COURT: There is no question that Gardner wrote to Judge Pierce saying the Judge had recommended

THE COURT: Where should he be sent?

MR. YOUNG: He was offered to go to Allenwood but for my request to stay here. I requested him to forgo going there so he could help me prepare the case. I think you will notice from Mr. Rakopf's affidavit if it weren't for this case Mr. Rakopf never would have found out about the designation. He learned Mr. Gardner had been designated to Allenwood. But for this case and my request he stay here he would have been in Allenwood.

Now, the redesignation to an institution where there seems to be clear evidence his life would be in danger, even if Mr. Pollack has been moved out, does seem to be harassment and an abuse of the respondent Carlson's, at least, exercise of authority.

THE COURT: I don't think so. What it comes down to, regardless of whether a mistake was made in letting the paper get out into the hand of Pollack, which is absurd and regrettable and ought to be avoided in the future, but whether they can protect him, having the paper get out, if the Bureau of Prisons lets anything happen to Gardner they would have a lot of explaining to do and they should have a big interest in having him safe. Having that interest, they have or almost a year, was in a residency specialty training program at Bethesda Naval Hospital in Bethesda, Maryland.

The next two years, from 1955 to '57, I was a staff psychiatrist at the U. S. Naval Hospital in Yokosuka, Japan.

From 1957 to 1960 I was in a specialty training program pf psychiatry at the Payne Whitney Clinic, which is at Cornell Medical Center in New York City.

From 1960 to '61 I was in private practice of psychiatry in New York City and also worked part time for the Childrens Court and the Adolescent Term Clinic.

From 1961 to 1963 I was a full-time psychiatrist at Mendota State Hospital in Madison, Wisconsin.

For the next two years, 1963 to '65, I was the director of a community mental health center in Grant County in Wisconsin and in part-time private practice.

From 1965 to 1970 I was in full-time private practice in Madison, Wisconsin.

From Decemqer, 1970 to May of 1971 I was the chief psychiatrist at the California Training

Facility in Soledad, California.

From May of '71 until June of '72 I was in private practice in Monterey, California.

And from July, 1972 until January, 1973 I was the chief psychiatrist of the Department of Psychiatry, Prison Health Services, for the City of New York, and worked during that time on Rikers Island.

From January, '73 to October, '74 I was the director of the Department of Psychiatry of the Prison Health Service. And since October, 1974 I have been full time at the lower East Side Service Center as a supervising psychiatrist. This agency is one which operates a number of drug treatment programs. And I'm currently there.

Q Doctor, would you describe your work and responsibilities as directof psychiatry for Prison Health Services for the Department of Corrections in New York City?

A Yes. The director of psychiatry was and is responsible for the administration and clinical direction of all mental health services in all of the New York City correction institutions.

In January, '73, and for most of that period, that involved 11 different institutions, six of which are on Rikers Island, and the others were the borough houses of detention.

It involved a clinical staff of about 300 people, some 100 of whom were part-time psychiatrists, but a number of other mental health professional and paraprofessional staff.

It also involved working with, at that time, the health services administrator, Mr. Chase, and Mr. Algibs, who was his deputy, in matters such as planning and budgets and dealing with other city agencies.

Q What was the size of the budgets of your department?

A The department of psychiatry, when I started there in January, 1973, was about 1.6 or .7 million dollars per year. And at the time I left, or just before I left, it was $4.3 million annually.

Q Doctor, have you read and are you familiar with the literature in the field of psychiatry?

A Yes, I am.

Q Are you a member of any professional organization?

A Yes, of two: the American Psychiatric Association and the American Academy of Psychiatry and the Law.

Q Have you published any articles in the field?

A Yes, I have, a few. Two have no relationship, or little relationship, to prisons, but they had to do with the concept called the therapeutic community, and those are based upon work done at the naval hospital in Japan, published in 1956 or so.

There have been several publications relating to the work and experience I've had in prisons, which include an article which was published in the San Francisco Bay Guardian about the California Department of Corrections and my views about how it could be changed and should be changed.

There was a publication in the Humanist Magazine which was entitled "Institutions vs. Ethics, The Dilemma Of The Prison Doctor," that was published in 1972.

In a book called "The Politics Of Punishment" I wrote a chapter called "Soledad, The Roots Of Violence," published also I think in 1972.

An article in the Journal called Psychiatric Opinion called "California Prisons: The Crime Of No Treatment."

Q Have you ever been qualified as an expert un the field of psychiatry by any court?

A Yes, I have been qualified a number of times. I can summarize those by saying that between 1971 and '76 I was qualified as an expert in seven criminal cases in the California Supreme Court in several counties of California. Most of those related to my work at Soledad.

From 1973 to the present I've been qualified in Federal District Court on 12 occasions in various courts around the country, all of these cases involving issues of prisons and the impact of prisons.

In one of those cases, which did not come to trial but was rather settled by stipulation, I was appointed as an adviser to the Federal District Court and am currently functioning in that capacity in advising him about the implmentation of his orders concerning Matteawan State Hospital.

I am involved in preparation in various stages of seven other trials, two of which are in the Superior Court of New Jersey and five of which are in Federal District Court.

Q Your appointme[illegible] court adviser before Judge Ward, was that by c[illegible] of both parties?

A Yes, it was.

Q Doctor, have you ever visited the Metropolitan Correctional Center in New York City?

A Yes, I have, several times.

Q When?

A The first occasion was September 3rd, 1975 which was very shortly after the institution opened, and that was a general tour of the institution.

In April and May of 1976 I made five separate visits to the Center, which occurred during weekdays, week evenings, and on Sunday a visit to the visiting areas in particular. And I was there again on the 9th of February of this year, spending a total of some 25 to 30 hours in the institution.

Q What areas of the facility did you observe on your tours?

A On the tours, it included representative living areas, such as 11 South for the dormitory areas, and other floors, which included 9 South, 7 North, and 5 North. I also visited the roof area and the second floor medical area.

In the combination of the two or three tours which I took I think I saw all the areas of the institution.

Q Did you have occasion to speak with inmates the inmates.

And I also would preface it by saying that in general inmates in prison, if they have a choice, would prefer a private space, whether it be a cell in a traditional prison or, in this institution, in one of the single rooms.

2 But on the occasion of the second and third visits it was extremely crowded. The feeling of being in a very close, compact space was very intense. The noise level was very high. It was clear that the inmates really had no privacy and no private space of their own except the bunk itself and perhaps a few boxes, cardboard boxes, in which they would store things underneath the bunks. And many of the inmates that I interviewed talked about the impact of being in that setting, this extremely crowded setting, in terms of the lack of privacy, in terms of the difficulty of that number of men being able to live in a reasonable and amicable manner.

One of the problems was that people were allowed to play their radios, for example, and they said that it tended to be three radios going at all times on three different stations and it really wasn't possible to deal with that problem because the selections of the stations tended to be often along racial lines, the blacks wanted to listen to WBLS and the whites wanted to listen to something else, and the Spanish to the Spanish stations, and to try to deal with that they felt would provoke, if not violence, unpleasantness. So it created real problems in the people living there together.

And some of the specifics which were clear were that the reading light, for example, originally designed to serve each bed, of course was blocked out by the top bunk so that the man on the bottom bunk really did not have a light adequate for reading. The bathroom is totally inadequate for 20 people, and it was, on the occasion of the last visit at least, without paper towels and in great disarray and clutter.

So just in general, in terms of the crowding, the noise, the lack of privacy and the inadequate facilities, it is not proper for that many people.

Q Do you have an opinion as to what effect, if any, confinement in that area has upon a person's mental well being?

A Well, confinement in prison is difficult at best for everybody, and I think the question can be answered just in terms of the dormitory but has to be enlarged to include the entire sense of strict confinement which is created by the modular unit, that is, that they really are not free to move around the institution very much, are confined to a single living space almost all the time, and the common areas, the dining rooms, the television room, et cetera, also were extremely crowded on the occasions of the second and third visits.

So there really was no place that a man in a dormitory could go to escape the noise, the confusion, the crowding, and to have some degree of privacy. So I think it has an adverse effect.

It is difficult to be specific about that effect because I think it is a cumulative one and it relates not just to the dormitory but to the modular unit in general and the institution in total.

But I think it is much more difficult for the men in the dormitory setting, with that many people, to adjust psychologically to the confinement.

Q Do you have an opinion one way or the other as to whether or not confinement by that number of people in 11 South would have any effect upon hostility between inmates or on tensions or on aggression?

A I think, just in general, if human beings are required to live in very extremely close physical quarters, the problems in adjustment are much more severe and the potential for conflicts and possible physical acting out is increased. I think that is true not only in prison but in any kind of living situation.

But also the fact that there really is nowhere that one may go to escape it in this particular case aggravates the crowded conditions in the dormitory.

Q Doctor, I would like you to assume that the dormitories were not at 120 persons or in that area but that, ather, the dormitory spaces house no more than their capacity, that is, 54 people. Assuming that was so, do you have an opinion as to the psychological effect of using that area for the confinement of persons who are to be held at the Metropolitan Correctional Center?

A Well, certainly, if they were not overcrowded and were operating at the designed capacity, it would be far preferable. But, as I said, most inmates would prefer the privacy of a single room or of a cell.

There would still be problems in living in a dormitory which would not exist in having one's own room. And also what I said about the problem of the confinement which is produced by the functioning unit would still remain.

So that the adjustment again would be more difficult for most people, I think, in the dormitory than if they had a private room.

Q What is the importance of privacy for human beings?

A I don't know that it takes an expert in anything to answer that. I think everybody needs the opportunity --

MR. SCHAFFER: Your Honor, I will object to the question.

THE COURT: Sustained.

Unless, Doctor, you believe that as a psychiatrist you have some special expertise to speak on the subject of privacy.

Do you understand that?

THE WITNESS: Yes, I understand.

Q Do you have an opinion as to whether or not the dormitory spaces even at capacity are adequate to meet the needs of privacy?

A No. I do have an opinion and it would not be adequate to meet the need of privacy as I would see it.

Q Could you describe what you base that opinion on, Doctor?

A Again, as I said, the way the living unit is set up even if it were only at capacity, there would not be the opportunity to be alone and a person has to deal always with a number of other people. And with the noise and everything that's going on in that particular living unit.

Q I would like you to assume, Doctor, that on occasion at the MCC persons have not been housed in a room as you have observed or the dormitory space, but rather have been assigned for sleeping purposes to the balcony space and were assigned cots on the balconies and I would like you to assume persons who had been assigned to such living arrangements had remained in those arrangements for one day to several days and in some instances over a week to ten days. Assuming those facts to be true, do you have an opinion as to what effect, if any, living in a space such as that may have on the men who are subjected to that in terms of their mental health?

A Yes. As I remember, although those cots placed on the upper landings or, how would you describe it, were somewhat separate from each other, it still presents the same kind of problem as in the dormitory. The man really has no private space of his own and in addition he would have the problem there being exposed constantly to the noise and movement that was going on in the common area. At least in the dormitory it is possible to deal only with the dormitory and not deal with the confusion and crowding in the common area. I think that really is an inadequate housing situation.

great difference. Many of the inmates whom I spoke with here had come from other institutions, institutions which in many ways they found less desirable such as Lewisburg, but they stated clearly if they had the choice, they really preferred it, say at Lewisburg, because they had their own living space and had the freedom to leave that space, move around, to make some choice and selection in other activites. That just is not possible in this living unit.

So, it increases the profound sense of confinement and I think it tends to lead to restlessness, boredom. I think it makes the possibility of conflicts between the population there more likely and in some cases I think the possibility for aggressive acting out or fighting. In fact, some of them describe that happening, I think, in specific reference to competition for the telephones.

In overall, I would say the living unit in one respect is better than most prisons I've ever seen and that is in terms of the individual single rooms. They are not like a prison cell and that certainly is an advantage and the general design of the place. But, I think the confinement which is part of that modular concept is very detrimental.

Q Do you have an opinion as to whether or not this modular unit has any effect upon the independence an inmate might have in making his own choices or decisions?

MR. SCHAFFER: Objection, your Honor. These questions are somewhat leading.

THE COURT: I will allow it.

You may cross-examine. The doctor is expert in his profession. I assume he will tell us only what he knows.

A Again, in any prison, the degree of independence allowed an inmate is small, extremely limited, and the degree of limitation varies from one sort of prison to another. But obviously, in this situation in which there are no possibilities to go anywhere, and therefore no choice is possible, the possibility for independent decisions and movement doesn't exist.

As a more general concept, the organization of prisons to produce cooperation or what I call submission in the inmate has to do with limiting his independence and his initiative and the possibilities for him making decisions about any aspect of his life. And the overall impact of that, I think, is profoundly destructive psychologically.

The institution is organized to produce a certain behavior which makes that man less difficult to deal with but at the same time the changes which occur in the man make him less able to deal with independent living when he leaves the prison and since almost all of the persons who go to prison leave it in not too long a time it just doesn't make sense to me.

The man is trained how now to make it in the world outside by the prison in the way it's run. It is true in every prison that I've ever seen.

Q As a result of your interviews with detainees and inmates at MCC, were you able to see or observe any manifestations of this impact, psychological impact on them?

A I really can't specifically point to any kind of behavior or appearance in the people that I could say reflects this. It's a cumulative kind of effect and it's not necessarily something which is evidenced by behavior. But, it is obvious in talking with inmates about their experience in this imprisonment. Not everybody reacts to it the same way. There are some who do submit and over the course of time really become profoundly passive and simply go along with everything that is asked about them by the rules or the staff.

There are others who fight with that, will rebel, break rules and get into trouble and become difficult not only to the prison administration but cause themselves a lot of trouble.

But as I said, there is, I think, a cumulative effect on anybody who is in a prison for any significant period of time.

Q Do you have an opinion whether this psychological impact that you just discussed is an inevitable consequence of incarceration?

A It's inevitable in prisons run as we know prisons. It's degree and intensity is variable and I can conceive of even the prisons --

Q I would like to direct you to the MCC in response to that.

A In specific reference to the MCC, the impact in producing this kind of submission, passivity and dependence I'm talking about could be much reduced if the institution were operated in a different manner, and that is not on the modular functional system which is so confining and which allows so little indepence of movement or decision, but rather if it were possible for the man to have the choice to go to a library, go to a gymnasium, go to the roof, go to a classroom, to a work shop or whatever, it would reduce the intensity of this reaction.

Q Does the fact that the design used in the modular units at the MCC which, as you stated, use rooms rather than traditional inside security cells, affect your opinion one way or the other as to the effect of the modular design upon detainees at the MCC?

2 A It doesn't really change my opinion in that regard, as I have stated. I think the living quarters themselves, that is the single rooms are certainly much better than in traditional prisons and I certainly favor that but the fact remains that the degree of confinement is extreme, much more so than in most orthodox organized and run prisons and I think the niceties of the living situation do not come anywhere near compensaging for that.

Q Do you have an opinion as to the importance of physical recreation and exercise for persons such as those who are housed at the MCC?

A Yes.

Q Could you describe what that is?

A Well, in general the population tends to be young although in this Federal institution the average age is somewhat higher than in most, for example, State prisons. But they are mostly young men. I think a high percentage of them are people who in their lifetime or in their lives in general value physical activity and movement. And, what happens to such people when they are locked up and confined strictly is something which sometimes is actually palpable and visible and that is the build up of an extreme degree of muscular tension and along with that, a kind of nervousness or restlessness which the man experiences as very uncomfortable and it really requires the opportunity for vigorous physical movement. And, exercise in order to discharge this kind of tension which I see really requires an outdoor space to provide the kind of freedom of movement and activity which would offset that effecgive confinement.

Q Did you observe the roof area at the Metropolitan Correctional Center?

A Yes, I did.

Q Did you also observe the areas on the modular units which had been designated exercise rooms off the common area?

A Yes, I did.

Q Having observed those areas, do you have an opinion as to whether or not those are adequate spaces for physical exercise and recreation?

A Yes, I have.

Neither of those spaces, in my opinion, is adequate to provide for the kind of physical movement and exercise I'm describing. Also, especially in view of the number of people who have to use these relatively small spaces. The so-called exercise room on the functional units is really quite a small room, and it not only contains a television set and some furniture, but recently, at the time of the recent visit anyway, a weight machine had been installed in many of those rooms. But, there was not space to accommodate all of that and certainly not space enough for a hundred or more people to use who were sharing that facility.

The roof space, again, is not all one open space. It's divided. It really is a confined space even though at the top of a 20-foot wall one can see the sky, it's not like being able to go out in a field.

Q Do you have an opinion as to how the modular design affects the use or adequacy of those spaces, the functional living unit plan?

A Well, for the roof in particular, in addition to the fact that it's a small space and really not well suited to exercise and recreation, it's not available very much. There isn't free access to it. It's done on a schedule, I think, two or three times a week for each living unit.

My own personal feeling is, there needs to be the opportunity for that kind of exercise on a daily basis and it should be quite readily available and not to have to go through an escorted group, for example, to get there.

The exercise room on the floor, of course, I can't say any more except although it is there, readily available to anybody who wants to go in, it's so small and serving multiple uses which really contradict each other.

The weight-lifting machine is noisy and people watching the television become irritated when people use it when they are there and it leads again to conflict.

Q Regarding the roof, what would be the effect on the mental well being of people at the MCC if the roof were available when they wished it rather than on a rigid schedule?

A I think it would be an improvement over what the situation is now for many reasons, because it would relieve this extreme degree of confinement on the living unit and a man could simply choose to go to the roof even though the roof is small and not very well suited to recreational uses.

At least it's away from the living area and having the opportunity to simply choose to go, I think, would be of great benefit.

(Continued on next page.)

Q Putting aside exercise for a moment, let me ask you about whether or not you have an opinion as to the importance, if any, of being able to leave indoor space and go outdoors while in confinement?

A I have an opinion. I think it would be extremely desirable to have that opportunity and to be able to make that choice. Not only because it allows a certain degree of freedom which does offset somewhat the confinement, but also there is something which inmates have described to me, not only those in this center but in other institutions in the city where exercise areas are rooftop, and that is it really doesn't seem to be a part of the outside world; it's very different than going out into a large field or large yard in a different type of prison.

I mention that because it is part of a kind of attitude which occurs or psychological effect which occurs in some prisoners when they are locked up and are not able to go outdoors in that kind of setting. That is, they describe a sense of really having lost the world, almost as though it isn't there any more. And it is a part of a kind of psychological effect which occurs, a kind of surrender to futility or hopelessness in terms of there being really no future, there isn't a future because there isn't anything out there for me, and the possibility of freely being able to go to an outdoor space does somewhat mitigate that kind of effect and therefore I think it is very important.

Q Doctor, I would like you to assume that there are certain jobs available, necessary to be performed to maintain the MCC but that these jobs by and large are not made available to detainees, people awaiting trial at the MCC and persons who are at the MCC designated as right persons. These persons by and large are not employed outside of the functional living unit, the modular unit, even if they wished to be.

Do you have an opinion as to the effect of that upon the mental well being of persons?

A Yes, in general.

I have already said that one of the most difficult aspects of imprisonment for inmates generally is inactivity. It is not only inactivity but the lack of what they can conceive of or to feel as meaningful activity, and for most men anyway that involves some kind of work which they can feel is somehow worth doing and useful, whether it is worth doing

MR. MUSHLIN: Your Honor, if it wasn't, it was an inadvertence and I apologize.

THE COURT: It is within the topics we have been hearing from others. I will allow it.

A The question is the effect?

Q Yes, sir.

A I'll preface the answer by saying that in general again prisons are organized to force a man to surrender his individuality, his initiative in many, many ways and one of those in many prisons, including this one, is in terms of the clothes that he must wear. Being forced to wear a standard uniform, which in most prisons has little to do with fit or style, is just another way in which the man is told that he is not an individual and that he has to do what he is told by the institution.

Again, if we are going to lock people in prison, which is in my opinion universally a destructive experience, attention should be paid to what could be done to at least minimize this psychologically destructive effect of institutionalization, recognizing this man is eventually going to go outside again, and one of those ways would be to allow some individual choice in matters of dress, grooming and that sort of thing.

Q Do you have an opinion as to whether or not the particular styling and colors of the uniforms that you observed being worn at the MCC has any particular effect?

A For many of the inmates with whom I dsicussed lots of things, including the uniforms, they consistently objected to the particular uniform, I think, because of its style, that is, a one-piece jumpsuit, which the men especially tended to find objectionable, and the colors, which were really outrageous, orange and yellow. The blue ones they didn't find so objectionable simply on the basis of a different color, because they weren't so conspicuous, I think.

Q I would like you to assume, doctor, that rooms at the MCC and other living spaces at the MCC are searched periodically by guards who search detainees' properties, and may confiscate items, but inmates of the MCC are not allowed to see such searches. Do you have an opinion as to this practice on the mental well being of the inmates of the MCC?

A Yes. The relationship between inmates and staff in most prisons is one of mutual distrust, and tend to be of an adversary nature rather than one in which there is some kind of alliance and cooperation toward a common goal. And as a result of that suspiciousness and distrustfulness, not only of inmates for staff but of staff for inmates is very intense.

My opinion is anything which aggravates that kind of relationship between staff and inmate is harmful to the inmate and harmful to the goals of the administration and institution because it makes it more difficult for them I think. This search is one of many ways in which this kind of staff relationship and attitude of inmate is aggravated. If his personal living space is going to be searched and he is not allowed to be there to see what happens, the kind of characteristic paranoid suspicion he is thinking is focused on that and inmates describe their fears about the loss of what to them are very valuable personal possessions, which may be nothing more than photographs of family or friends, but many of them are confiscated during the searches, and also the fact that they can't see. The fear the staff is going to plant something there and then charge them with having contraband and they would have no way to say anything about that was expressed.

The most harmful effect of that procedure is to aggravate the mutually distrustful relationship between inmates and the staff.

Q What is the importance of personal property to a person in an institution such as the MCC?

A Well, in the MCC and in most other prisons the personal property allowed is severely limited. Many items are declared contraband which are just, in my opinion anyway, ordinary and not dangerous items, not only in the prison but items that the men might be used to having on the outside. So the few things he is allowed to have assume extraordinary importance and they tend to be often such items as toiletries, for example, which in most prisons are really very limited so that if a man has soap, deodorant and that sort of thing it is very important to him. And photographs in particular assume great importance because they become a link with the person or persons from whom the man is separated by the imprisonment. Because of that effect it assumes extraordinary importance. To lose that is a great loss, although to us it might not seem so.

Q Doctor, I would like to ask you a question about the fifth floor area for women. You observed that, did you not?

A Yes.

Q I would like you to assume when women are subjected to disciplinary confinement on the fifth floor, known as deck-lock, they are locked into the rooms that you observed which have solid doors and no toilet facilities, and that they may be confined in such rooms for 23 or so hours each day for several days, and on some occasions several weeks.

Do you have an opinion as to the effect of confinement in that manner in those rooms?

A Yes, in several parts. The way the living unit is arranged an inmate locked in the furthest room in one of the units might be a considerable distance from the gaurd, usually there being only one or two in the unit, and this would mean several things.

One, that it would be difficult if not impossible to call for help.

MR. SHAFFER: Your Honor, I will object to this testimony as being outside of the range of a psychiatrist's expertise.

THE COURT: What you just said, is that the basis on which you are going to make some psychiatric judgments, doctor?

THE WITNESS: It relates to a particular psychological effect.

THE COURT: I will allow it.

A It comes from interviews, from inmates who were locked in their rooms for an extended period of time, not women but to men. But the principle applies, I think. That is, being locked in the space really frightens a lot of people. For whatever reason they are locked in there, just to be so isolated and away and not have a means of communication is frightening and that is a detrimental effect, to have that kind of anxiety.

Secondly, the lack of a toilet, for example, it is extremely embarrassing to most people, at least in our culture, to have to ask someone, an adult, to ask to have someone's permission or help to get to a toilet and to know that there isn't free access. I think it creates a whole kind of feeling of embarrassment which is unnecessary. I think that kind of situation shouldn't exist.

Q You have observed other segregation units in other prisons, have you not, and jails?

A Yes, I have.

Q Have you ever observed a segregation unit where people are locked into an area for 21, 23 hours a day, without toilet facilities?

A Unfortunately, I have.

Q Where is that?

A I guess I've seen such cells in almost every prison. In most of them they aren't used, the attitude of the administration being only in extreme circumstances would they put somebody somewhere without a toilet. But I have seen the condition.

Q What about in New York City?

A Not in New York City.

Q I would like you to assume also that persons, men and women who are held in segregated status such as we have just discussed, may be locked into their rooms for periods of days or weeks, during that period may not have access to the roof area at the MCC.

Do you have an opinion as to what effect, if any, on the mental well being of people subjected to that practice might be?

A Yes. I have already described the kind of extraordinary tension which can build up in some persons under conditions of close confinement. I was speaking in that case in terms of the modular unit.

But confinement can be of successfully more intense and stringent degrees. Confinement in a prison is confining, and then a maximum security which is more so and a segregation area and finally one can be locked in a cell and left there, which is the most extreme degree of confinement, and to be left there for any period of time, by which I would say more than a day, is very difficult for most people to tolerate, and it has to do with not only the development of this kind of physical tension and not having any opportunity to do anything with it, such as to go outdoors and exercise or in this case to go to the roof and at least walk around, but also the psychological isolation of being locked up and out of contact with other people for almost all of one's time, is extremely difficult to tolerate.

Q Is there any importance, if any, to the fact that a person in that confinement is not allowed outdoors?

A I described several effects being able to to get outdoors or to have a sufficient space, preferably outdoors in which to exercise and move. It does allow for the discharge of this kind of unpleasant tension, but also the psychological effect again of feeling some connection, at least, with the world out there by being able to see the sky or trees or grass does alleviate somewhat this feeling of extreme isolation which goes along with that kind of confinement.

Q Doctor, I would like you to assume that the visiting areas you observed at the MCC are open three hours per day, seven days per week, that inmates may have three visits per week and that the visits may be as short as one hour each, and that inmates may have visits with visitors who are placed on an approved vistors list and no more than six individuals are placed on that list.

Assuming those facts to be true, do you have an opinion as to the effect, if any, of this visiting program on the mental well being of inmates of the MCC?

A I have an opinion, and that opinion is that the opportunity for for visiting is not sufficient with that kind of arrangement.

When I first visited the institution in September, 1975 it had just opened, had not yet reached capacity, and when we visited the visiting area we were told by the officer there that the room was open 12 hours a day and that visiting would be unlimited in terms of number of people and the length of time they stayed as long as the room didn't become overcrowded and at that time the room was not overcrowded so people could have a number of visitors who might stay for several hours. I felt that was terrific. That kind of visiting is really not possible in most prisons.

Also, the room at that time, not crowded, which was designed in the way to at least minimize the appearance of an institution and which allowed contact visiting, I felt was favorable.

However, on the repeat visit, when the room was intolerably crowded I felt, people almost standing on top of each other or sitting upon each other, and a very high noise level and obviously no possibility for any kind of privacy in the visit, I felt was very negative and the fact the hours are now so restricted I think is bad.

As a foundation for my ideas about visiting in general I would again say that almost every inmate will say that next to losing his freedom, the most difficult thing to deal with is being separated from the people with whom he has close emotional ties or relationships, whether it is parents or spouse or children or friend or all of those. To me that's probably the single most destructive effect of imprisonment, the disruption of those kinds of relationships which are very important to all of us in terms of maintaining some sort of mental balance or psychological balance. Also, because a man who has such relationships and is able to maintain them during imprisonment is going to have a much better chance to make it again when he leaves than the man who doesn't, and to maintain that kind of relationship requires frequent and open contact. The opportunity is there but it is just not being provided.

Q Doctor, I would like you to assume that there are no vending machines in many of the visiting rooms at the MCC, nor are visitors or inmates allowed to bring food with them into the visiting room.

I would like you also to assume that the washrooms, the rest rooms , which are present in each visiting room are locked and may not be used by inmates or the visitors or the children.

Do you have an opinion as to what effect, if any, these factors have upon visits at the MCC?

A Well, that almost seems designed to make people miserable, to not have such elemental, again, requirements as toilet facilities and drinking water, at least. And also I'm sure that it has the effect of discouraging visits. It must be very difficult for a family with small children, for example, to remain for any length of time without a bathroom and some sort of drink.

I can't say that the food is essential, but it certainly would make a much more, I think, pleasant visiting situation in many respects.

Q I would like you to assume that after each visit inmates, whether male or female, are escorted into an area which connects the visiting room to the modular unit and there they are asked to remove all their clothing for a search by a correction officer. That search requires the inmate to expose the palms of his hands and his feet, to open his mouth for visual inspection, and requires the inmate, in addition, to turn around, bend over and expose his rectal area for visual inspection by the guard.

Assuming that to be the procedure after each visit, do you have an opinion as to what, if any, is the psychological effect of that search procedure?

A Yes. It probably puts the inmate into the most humiliating kind of situation which is possible. It also, I think, leads to the aggravation of this adversary relationship which I described between the prison administration and staff and the inmates. And there are a number of aspects to this.

Not only being stripped naked, which is embarrassing to most, again, people in our culture, but the requirement of having to bend over and expose one's rectum, or anus, is particularly objectionable and humiliating to particularly men in this culture and in the prison setting, and there are some specific reasons for that.

Part of the inmate-staff relationship has to do with domination and submission, the staff obviously dominating, and the requirement beingthat the inmate submit. This is just in general.

There becomes injected into that in many cases, just because human beings are the way they are, a kind of sadistic component on the part of the staff which does not necessarily imply physical mistreatment or injury inflicted but a kind of psychological sadism. And I've seen this procedure done many times in many prisons, and it has been almost without exception done in a way which I felt was excessively and unnecessarily psychologically cruel, in terms of taunts and jokes and remarks which put the inmate in, again, an extremely humiliated position, put him dowh, impressed upon him the fact that he was under control and he had to do exactly what he was told. That is another part of it.

Another aspect of it, again especially in prisons, is the whole atmosphere regarding homosexuality, which is all tied into this whole attitude and condition of domination and submission, sadism and masochism, and is of obvious concern in every prison. And from that point of view the position of having to bend over and expose one's rectum for a man is the most vulnerable, and many inmates will specifically say that they have a fear of sexual assault in that kind of sitaution, where they are helpless and exposed.

I am not saying that it happens or that it doesn't happen often. I don't know. But the feeling is there, and I think it has an overall very detrimental effect not only upon the inmate but upon eventually the operation of the institution, because it again is a factor in aggravating this kind of relationship between the staff and the inmates. I think it just makes the job more difficult.

Beyond that I will say, as a doctor, that it just doesn't make sense to me, in terms of the fact that it be almost impossible to conceal anything of any bulk between the buttocks and not have it obvious to everybody, in terms of the way one would have to walk and carry one's self, and also to insert something into the rectum is difficult, painful, would require time and opportunity which is not available in the visiting areas, and the search wouldn't find it anyway.

Q Why is that, doctor?

A If an object is inside the rectum, it has been passed through the anal sphincter, which holds the rectal cavity closed, and there is no way that one can get inside there by simply having a person bend over and spread his buttocks. It requires an instrument to open that muscle.

Q Doctor, what is the importance of priivacy for family visiting?

A Well, family would apply to either husband and wife, I presume, or parents or any kind of combination, and all of these relationships, again, have a special kind of quality of what we can call closeness or intimacy, and it is really necessary to have privacy, I feel, in order to maintain that kind of feeling.

I mean the intrusions of other people or of the environment either makes it impossible or difficult, I think, to achieve that kind of special feeling relationship with a person. It really is necessary to be able to be away from the view of others and to be able to talk very openly and personally, and people can't do that when they are in the midst of other people. It is just not possible to do it for most people.

Q Did you observe whether or not it was possible to obtain that kind of privacy in the visiting room in the MCC when you observed them in use?

A On the occasion of the first visit, when the rooms were not crowded and really sparsely populated, it might have been possible for a family group or a couple to have been off in a corner with some degree of privacy. But they are still open to view and others could still hear what was said. So it really didn't provide this kind of privacy.

On the occasion of the second and third visits, when the room was extremely crowded and noisy, it was simply impossible to achieve any degree of private communication.

Q I would like you to assume, doctor, that it is the policy of the Federal Bureau of Prisons in the operation of the MCC that sexual relations are not allowed between inmates and their spouses. Do you have an opinion as to the effect, if any, that that practice and policy has on the mental well being of inmates in the MCC and their families?

A Yes. I have been describing the kind of difficulty and painful adjustment which inmates go through and which they describe in being separated from the persons in their lives with whom they have close emotional relationships, and that can include, as

Q Now with respect to your belief that confinement is inherently harmful, I take it is your personal and professional goal to seek to make prisons and other institutions of confinement as much as possible like the world outside. Would that be a fair characterization of your own personal and professional goals in this area?

A Yes, it would.

Q Now, I beliede you stated that you have testified as an expert in 12 cases involving prisoner rights.

A Yes, in Federal Court.

Q And you mentioned also that there were five pending Federal cases, and I wasn't clear on whether those five are included in the 12 or were in addition to the 12.

A In addition to.

Q So that you have now appeared in 17 prisoner rights cases?

A No. I've appeared in court in 12 cases.

Q I see. And in five more you are waiting to appear?

A That's right.

Q And in any of those cases have you testified on behalf of the defendants, or respondents?

A Meaning the prison or Government officials?

Q Yes.

A I've never been asked to.

Q It is a fact, is it not, Dr. Rundle, that your testifying in these 12 cases and five more to come is for you a means of furthering your own personal and professional goals with respect to reforming institutions of incarceration in the directions in which you believe they should be reformed?

A I'm not sure it is fair to use the word "reform."

Q Well, I'll change that and we'll just say change.

A But, certainly, to do whatever I can to bring about changes which I would see as desirable and beneficial to the individuals and to society.

Q Indeed, Dr. Rundle, you left correctional work, did you not, in part out of your feeling of frustration that you were not accomplishing enough on the inside, as it were, and the feeling that you could do more to effect the changes that you desired by involving yourself in such prisoner rights litigation? Isn't that true?

A Not exactly correct. I was involved in much of the litigation while I was still working within prison systems, and I saw both of those efforts as at least holding the possibility of producing some significant is that a negative effect?

It seems to me evident that 20 is because it is contradictory to the public health requirements in this city, as another expression of why I think it is negative and undesirable.

But the concept seems to be that the institution will simply cram as many people in as necessary, whether it means 10 in a dorm or 20 in a dorm.

Q Well, is your testimony then that the psychological effect depends on who the architect was and what he wrote down as to the designated number when he submitted his blueprints?

A No, I'm not suggesting that at all, although certainly the architect and the building he designed have something to do with the effect on the people placed in the building.

Q Yes. But you gave your opinion as a psychiatrist, and I would like to know whether that opinion was based on anything else other than what you may have heard the architect had designed the building for.

A You mean the number for which it was designed?

Q Yes.

A Or the purpose?

Q No, the number.

A It was based upon my observation of the living situation at one time when it was at less than capacity, at another time when it was approximately at double capacity, and talking to inmates about their experience in those situations.

Q At the time that you first visited the MCC in September of 1975, in your opinion was the living situation in the dormitory at that time adequate from the point of view of the mental health of the inmates?

A Well, I've already said that I think the inmates prefer privacy. People in general, I think, prefer privacy. And I think that a private living situation in a prison is preferable to a dormitory one, just as a basic kind of premise.

But if there is a dormitory, if it is not overcrowded, and if there are adequate physical facilities, and if there is some at least minimal private space available for the occupant, that's much better than if it is at double capacity and there really isn't any kind of privacy or private space.

Q And when you visited the dormitory in September of 1975, did you find, putting aside your reservation about dormitories altogether, that at that time it was not overcrowded and adequately met the living needs as well as a dormitory can, in your opinion, of the inmates?

MR. MUSHLIN: Your Honor, that is confusing. He asks him to put aside one of his basic criticisms and then asks him to conclude that it is not harmful, when he has already said -- I mean, the question takes out his major assumption and then asks him to draw a conclusion that he can't draw without the assumption that he said he uses.

THE COURT: Let me hear the question again.

MR. SCHAFFER: Let me rephrase the question.

THE COURT: All right.

Q In answer to my previous question you indicated that you have reservations about dormitory living per se but if there had to be dormitories, if they were at least not overcrowded, and you specified certain other characteristics, you indicated that that would be preferable.

And I'm asking you now specifically whether, when you visited the MCC in September of 1975, saw the dormitories on that occasion, the dormitory unit fulfilled those conditions which you stated for adequate dormitory life.

MR. MUSHLIN: Again I think that is the same problem. He said that dormitories present problems inherently in the lack of privacy for people in prison.

THE COURT: No.

Are you able to answer the question, Doctor?

THE WITNESS: I could answer it only by saying that on that occasion the dorm was being used by the number of people for whom it was designed and that it was minimally adequate in terms of a dormitory. My objections and reservations about dormitories stand.

Q Well, let's focus in on those general objections to dormitory life.

You stated that inmates have stated to you that they would prefer private rooms. Other than that, on what do you base your psychiatric opinion that dormitories are harmful?

A Well, it isn't just what I've been told by inmates. I think one's personal experience as well can be incorporated into what may be considered professional opinions, and also just in knowing human beings and their reactions in general.

Most people don't like that kind of living. And specifically in terms of another setting, mental hospitals in the past were built with enormous open wards, which were usually jam packed with beds right next to each other, with no place for personal possessions, with community bathrooms which were inadequate, and all the same problems exist there in terms of the lack of privacy and inability to get away and the conflicts which occur among the inhabitants of the space and the inadequacy of the physical facilities.

And it is not just what inmates tell me about their preferences.

There is another specific element, however, which enters into prison, and that is the fear of physical assault and the fear of sexual assault which is present in every prison, and that particular fear is intense in a dormitory setting, at least for a certain number of people, and it sometimes produces an anxiety reaction, which we describe as panic reaction, which is fairly specific in terms of homosexual fears, and the dormitory setting either produces that or aggravates it whereas, if a man has his own room or his own cell into which he is locked at night, he doesn't have to deal with that particular fear related to the prison.

Q You referred before to what people like, and I would like to ask you whether in your opinion people's preferences, what trey like, is equivalent or is a major factor in your opinion as to what is psychologically harful.

A To a certain extent. But I'm not taking the position that simply because someone likes or wants something that that meansit is best for them or good for them.

Q Well, other than that, what are you relying on? Just this feeling of panic and fear?

A I think I just explained what I am relying on.

Q Have you seen any evidence to indicate that the number of assaults, sexual or otherwise, is greater at MCC in the dormitory unit than elsewhere in the institution?

A No, I've seen no evidence. But there really is no evidence in any prison, which is reliable, about sexual assaults.

Q What about just fights?

A I have no evidence of it, no.

Q Have you ever seen any evidence of this statistical nature with respect to any other institution indicating that the dormitories are a more dangerous place to be housed?

A I'm not aware of that kind of statistic about dormitories, and statistics about prisons in general are very scarce, in terms of the psychological effects.

Q Of course, there do exist statistics relating to prison suicide, do there not?

A Yes, there do.

subjected to them. If they had been confined to other institutions --

THE COURT: You can argue all that later.

Q So it is your opinion then that one day in a dormitory unit has a significant harmful psychological effect, is that correct?

A Yes, in terms that I have described.

Q Do you that effect continues throughout the rest of the person's lifetime or is it a temporary effect?

A I really can't say. I think there is a possibility that it can be ongoing. People vary in their ability to cope with situations. Some it might not have a permanent effect, and on others, it would.

Q That raises an interesting question, Dr. Rundle. Aren't human being in fact relatively adaptable to physical environments and isn't it a fact that dormitory living goes on in a number of institutions, military, mental hospitals, normal hospitals, prisons, and from those experiences can you point to any data to spport your opinion that dormitory life is inherently harful and even in short doses, may have long-term psychological consequences?

A By data, you mean published?

commons area in terms of mobility, but rather that there were not other areas to which the person could go and that the activity which was available in that commons area is extremely limited.

Q Let's focus in on the movement itself. We will come to the activity in a minute.

I take it it is your testimony then today, that the amount of movement within the modular unit itself in your opinion is not adequate to meet the psychological needs of the inmate, is that correct?

A If that's all that's available?

Q Yes.

A That's correct.

Q With the exception of roof visits, approximately four times a week, for one hour?

A Yes.

Q Dr. Rundle, you testified, did you not, in the Queens House of Detention case on September 8, 1975?

A Yes, I did.

Q And in connection with your testimony in that case, you had occasion to compare the Queens House of Detention to the recently opened MCC, did you not?

A Yes, I did.

Q Referring to page 104 of your testimony on that day, starting line 14 you stated, did you not, referring to the modular units at the MCC:

> "The whole setting is done in a way as to minimize the traditional jail kind of atmosphere and within the restrictions of the institution to maximize the possibility for independent choice and decision and movement within that area."

Do you recall giving that testimony?

A Yes, I do.

Q Is it your belief that that testimony is consistent with the testimony you have given today?

A Yes, it is for this reason --

Q The question just called for a yes or no.

THE COURT: Sooner or later, if you ask him a question like that he will answer it.

Q For what reason do you think it's consistent?

A That opinion was based upon a visit to the institution shortly after it opened before it even reached capacity. There was no crowding. I did not fully comprehend the meaning of the modular unit at that time in terms of the confinement and the lack of movement and activity which it entailed.

I was reacting more to the individual rooms and the design which I certainly found then and find now greatly superior to, I think, any other prison I have seen. It's much less like an institution. I don't think that's inconsistent with what I am saying now.

(Continued on next page.)

negative effect although some of it is unavoidable.

Q Yes, I understand that, Dr. Rundle, but at a certain point either those running institutions or the courts or somebody has to make a decision as to where to draw the line.

Do you have an opinion as to the length of incarceration in a modular unit of the type that exists at MCC at which point the harmful effects become so severe that incarceration under those conditions beyond that point in time should not be permitted?

A I don't think it should be permitted at all.

Q And that one day of incarceration in a modular unit at the MCC has in your opinion significant harmful psychological effects?

A Yes, and which are avoidable.

Q Dr. Rundle, there have been studies with respect to other areas of confinement and as to the psychological effects thereof, have there not, such as the space programs, submarines, and things of that nature?

A It's the only one that I know of.

Q Are you familiar with those studies?

A Not very. I know they've been done.

ment within the modular unit at the MCC leads to restlessness, boredom and a greater likelihood of conflicts.

What evidence do you rely on for that observation, specifically with reference to the MCC?

A I can't separate it specifically with reference to the MCC. It has to do with my general experience with prisoners in various prisons and the effect of confinement upon them. It comes specifically here from interviews with inmates.

Q In other words, they told you they were restless and bored?

A Yes, and with specific explanations and descriptions in terms of the modular unit and the confinement which they experience there, often with reference to the institutions from which they came, as I have described.

Q I believe you testified earlier that you have visited approximately 14 correctional institutions, was it? I'm sorry. The number slipped my mind.

A I think I said 30 or 40.

Q Of those, approximately how many of those were jail or detention-type facilities?

A I think about 12, 12 to 15.

Q In your experience did you find that jail or detention-type facilities created a rather greater degree of confinement of the inmates than penitentiaries?

A In general, yes.

Q With respect to the effects of confinement, would it be your opinion that the shorter period of incarceration or that a shorter period of incarceration in a jail-type facility, which is more confining, might not necessarily be worse than a longer confinement in a more open type facility? That is, wouldn't the length of time to some degree counterbalance the degree of confinement when one seeks to estimate what the effects of incarceration are?

MR. MUSHLIN: I apologize, your Honor. May I have that question?

THE COURT: Will you read the question.

(Question read.)

Q Dr. Rundle, when you visited the MCC and spoke to inmates, were you alone during those tours or were you accompanied by other individuals?

A I was accompanied by other individuals, but in interviews with many of the inmates I was alone.

Q Did you identify yourself to the inmates as in any way involved in this lawsuit?

A Yes, I did.

Q Did you inform them that you are a potential or actual expert witness on behalf of petitioners?

A Yes, I did.

Q And that was true of all your visits?

A Well, in general it was true. I think there were some probably short conversations in passing in which that was not said, but in general that was true.

Q Dr. Rundle, in addition to the notes that you made of conversations with the inmates, did you take any other notes during your tours of the MCC which you have used in preparation for today's testimony?

A I think not.

Q Dr. Rundle, with respect to your testimony concerning the submissiveness which you feel is engendered by incarceration, are there any published articles or studies or statistical data upon which you rely or of which you are aware concerning this alleged syndrome?

A There are published works which deal with the question of what is usually termed "institutionalization." I don't know any specifically about

Q You did state though, on your direct testimony, that you felt that this submissiveness was a cumulative sort of experience for any person in prison for a significant length of time. I believe those were your words.

Can you be more specific as to what you mean by a significant length of time?

A The process begins immediately, as I have said.

Q Yes, you have stated that. But in your opinion when does the process really get going?

A Immediately.

Q But the degree and intensity of that experience would depend on other things, on the length of incarceration, would it not?

A Yes, I think so.

Q Dr.Rundle, you testified that the confinement within the modular unit at the MCC was more extreme than you had encountered in other prisons.

Can you specify what other prisons you were referring to?

A I think any of the prisons which I visited, other than some of the houses of detention in New York City, would be included. Federal prisons: Terminal

I think those who are designated as workers.

Q Was that also not the case at the New York detention houses?

A Not in all of them. It was in some, depending upon the institution.

Q The long-term correctional institution you have referred to, were those generally horizontal as opposed to vertical institutions?

A Yes, all of them.

Q You stated with respect to recreation that the denial of or restrictions upon physical exercise creates a build-up in muscular tension.

Did you examine any of the medical records of any of the inmates of the MCC in that connection?

A No.

Q Did you perform any medical examinations on any of the inmates with respect to muscular tension?

A That information came from interviews and evaluating their description of how they felt. Knowing the medical service available there, I doubt the records would be very helpful.

MR. SCHAFFER: I would like to strike the last comment. I don't think it is responsive or very helpful either. May I have that stricken, your

Honor?

THE COURT: Surely.

Q Are you aware of how often the roof recreation is available to each unit, that is, how many times per week they are permitted to use it?

A My impression was two or three times a week. I think you mentioned four.

Q Do you know how much time they are permitted to stay up there for each such visit?

A I think approximately one hour.

Q During your visits to the MCC did you ever see any individuals doing exercise on the balcony areas?

A No.

Q In your opinion, would that be an appropriate area for doing exercises?

A Appropriate? You mean sufficient?

Q Yes, in terms of the space?

A No.

Q Why not?

A It's still a part of the confined space, it's small, and it doesn't allow for what I was describing in terms of an outdoor space where really vigorous exercise is possible.

One can do calisthenics, I suppose, but

that's not the sort of thing I was talking about.

Q What kind of exercise do you think is necessary in addition to calisthenics?

A I think there needs to be the opportunity in a large space, preferably an outdoor space, but if not that, for example, a gymnasium, where it is possible to really run, engage in sports, or whatever, but without having to worry about bumping into the wall, falling off the balcony or whatever.

Q In your opinion does the roof area satisfy that need?

A No, I don't think it does. It's certainly better than the balcony.

Q Why don't you think the roof area satisfies that?

A It's small, it's confined and it is used by a large number of people at one time.

Q When you say confined, you are speaking about the walls around it?

A And it is small, yes.

Q Would you say that the roof recreation area at the MCC is smaller than the yard facility at the Branch Queens institution where you worked?

A Much smaller.

your conversations with inmates. Will you agree that the use of conversations with inmates presents certain methodological problems because of the possibility that the inmates speaking to you are either untruthful or have exaggerated or may be so preoccupied with their emotional problems that their descriptions of what is going on or their complaints about what they would like to have may be either inaccurate or not reflective of their true interests?

A I am aware of that.

Q And do you agree that that problem renders somewhat treacherous conclusions based upon conversations with inmates?

A No. Working with inmates from a medical viewpoint, and especially psychiatric, is really not all that different from working with the population at large. And part of medical training in general and psychiatric training in a more refined way, and more specialized way, has to do with checking out the accuracy of the information which is obtained in terms of history, a medical history, for example. It is very common for people when they come to a doctor to distort or omit or add things, and one must be always alert for that.

There are certain aspects I think of prison life and of the population in prison which makes that more of a problem, certainly. But what I'm saying is I'm aware of it and am making the effort continuously in working in this kind of situation to evaluate it in regard to that.

Q When you interviewed these inmates, you did not have their medical files before you, did you?

A No.

Q And you have not examined those medical files since, have you?

A No.

Q I take it there are some exaggerations or certain kinds of statements by inmates which as a matter of common sense you are able to identify as being distortions. I think your notes indicate that one inmate stated to you that he thought the conditions at the MCC were a plot by the CIA to break down his will, and I would assume that certain statements of that nature might be readily identifiable as potential exaggerations.

But that's not always the case, is it? There are sometimes comments where, if you don't have an independent source for verification, you really evolve where a person had truly lost that sense of contact with the outside world?

A Well, I think I explained it happens in some people very rapidly. With some of the people who committed suicide, for example, it seemed that that was the dynamic, or the motivation, behind them killing themselves, that kind of sense, which in some cases occurred almost immediately or within a few hours of admission to the jail. In others it might take a prolonged period of time.

Q During your visits to the MCC, did you have any inmates who made statements to you who otherwise evidenced symptoms indicating that they had lost contact with the outside world?

A No, not in the way I was describing the loss of contact.

Q In connection with your testimony about job opportunities, I believe the hypothetical question that was asked to you assumed that by and large inmates who are pretrial or who are at the MCC on writs do not get job opportunities. Are you aware of whether or not that in fact is true at the MCC?

A No, I don't know.

Q I'm going to ask you to assume that a certain

That isn't what you asked me in this case.

Q I thought I used the word "reasonable." Are you distinguishing --

A Reasonable requires some kind of standard. Fairness I think is a more generally applicable quality.

Q If the practices that you have been testifying about were fair and rational and were perceived as such by the inmates, then it would be your opinion it would ameliorate the negative psychological effects?

A Generally, yes.

Q Dr. Rundle, you testified as to the general problem of distrust between inmates and staff and of an adversary relationship between them. What evidence of that did you see at the MCC.?

A I can't speak specifically of anything at MCC except a general impression which I gained in talking with a number of inmates and it had to do with several specifics. For example, request for medical attention, which according to the inmates' view went unanswered, and in more than one case their interpretation, to mean that the officer or person responsible on the floor deliberately destroyed the requests. But much of that is really based upon an opinion which I hold from general knowledge of prisons, not specifically this one.

Q With respect to the procedures followed in searches of rooms, you testified as to fear of inmates that valuable personal possessions would be taken, such as photographs of members of their family or loved ones.

Are you aware of any evidence that any such property has ever been seized at the MCC?

A No, I'm not.

Q Did any of the inmates with whom you spoke at the MCC voice that particular fear to you?

A I think not.

Q Doctor Rundle, when you made your tours and had these interviews with inmates, how did you pick which inmates to talk to? Did you choose them at random or were their names given to you by someone?

A Well, on the tours in casual contacts, whatever happened. Some of them might have approached me or I might have approached them to ask a question. In the more detailed and longer interviews it was my own wish to interview inmates from specific areas and who met certain conditions. That is, someone in the dormitory who had been there perhaps a long time, some-